

Volume 1

Pages 1 - 185

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MARILYN HALL PATEL

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CR. 07-0765 MHP
	)	
MENDEL BEKER, ARIE PRILIK, and	)	
NEWCON INTERNATIONAL,	)	
	)	San Francisco, California
Defendants.	)	Tuesday
	)	January 11, 2011
	)	10:00 a.m.

**TRANSCRIPT OF PROCEEDINGS**

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(Appearances continued on next page)

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P R O C E E D I N G S

Tuesday, January 11, 2011 10:00 a.m.

**THE CLERK:** Calling Criminal 07-0765, *United States versus Mendel Beker, et al.*

**THE COURT:** I'll get your appearances shortly, because I'm going to introduce you, and then you can put your appearance on the record. And we won't have to go through all of that at that time.

Good morning, ladies and gentlemen.

**PROSPECTIVE JURORS:** Good morning.

**THE COURT:** Ah, well, that was pretty good. Shall we try it again? Good morning.

**PROSPECTIVE JURORS:** Good morning.

**THE COURT:** There you go. Okay. Very good. I know it's very crowded in here. We're going to go through the process of jury selection. Many are called; a number are chosen. And we'll figure out who those are going to be in just a little while.

As I understand from the Jury Commissioner, you've all been prescreened. You understand that this case may take three weeks. It's going to come in under that, I'm sure. And we will be in session from Tuesday threw Friday, from 8:30 to 1:30. One or possibly two breaks, you know; coffee breaks or convenience breaks. And then you can leave and go about your business, or go home, or whatever you need to do for the rest

1 of the day, so that there will be a chunk of time, and we'll  
2 get everything done during that period of time: 8:30 to 1:30.  
3 And, as I said, it's going to take, I think, a little less than  
4 three weeks. So we're giving you an outside number, just in  
5 case. Not likely, I think, from everything I've heard from  
6 counsel.

7           So I understand everybody's going to be prescreened.  
8 So I'm not even, you know, going to ask you about hardship,  
9 because I don't want to see a bunch of hands telling me you've  
10 got hardship, because you had a chance to say you were not  
11 available, and you didn't do that. And you may find this is an  
12 interesting experience, in any event. So let me tell you what  
13 that experience is going to be.

14           What you've been called here to hear and decide is a  
15 criminal case. And they involve charges against three  
16 defendants. And so the case is styled as *United States of*  
17 *America against Mendel Beker, Arie Prilik, and Newcon*  
18 *International, Limited.*

19           The case involves an alleged scheme -- and we always  
20 say "alleged," because this is what is alleged by the  
21 Government, and has to be proven -- an alleged scheme to  
22 defraud the United States Army Tank Automotive and Armaments  
23 Command, which you'll hear us refer to throughout the trial as  
24 "TACOM" -- the acronym; to deprive or defraud TACOM of money  
25 and property. That occurred approximately between the period

1 August 2005 and February 2006.

2 Specifically, it involves a contract between a prime  
3 contractor -- a company; the acronym is "ITE" -- and the  
4 government, namely "TACOM," in this case.

5 It also involves a subcontract between a company  
6 known as "ATN," which I think is "American," something,  
7 "Networks" -- and the prime contractor, ITE, by which ATN  
8 supplied night-vision goggles to ITE, for them to supply to  
9 TACOM.

10 The indictment charges the defendants with two counts  
11 of wire fraud -- one involving transfer of money, and the other  
12 a telephone call -- a count of conspiracy to commit wire fraud;  
13 and, as to two of the defendants, money laundering. So those  
14 are generally the charges.

15 Because I'm going to ask you whether any of you know  
16 anything about or have heard anything about this case, I think  
17 before I ask that question, it would be better for me to  
18 introduce the parties to you, and their counsel.

19 And so over here we have the United States. That's  
20 represented by the United States Attorney's Office in this  
21 District. And Ms. Jeane Hamilton, Mr. David Ward,  
22 Richard Cohen. And I see Ms. Pletcher's names' on that; not on  
23 this list; but Ms. Hamilton, would you take the responsibility  
24 of introducing everyone at your table, please?

25 **MS. HAMILTON:** Thank you, your Honor.

1           To my right is Mr. Richard Cohen. Also part of the  
2 prosecution team is Ann Pletcher, David Ward, Janice Jacobson,  
3 and Sarah Murray. This is the team.

4           **THE COURT:** Thank you. Now, you know, keep all of  
5 this in mind, because I'm going to ask you in a little while  
6 whether you know any of these people or have heard anything  
7 about them, et cetera.

8           The defendants are, as I mentioned earlier,  
9 Mendel Beker, also known as Michael Beker; Arie Prilik; and  
10 Newcon International, Limited. And they are represented --  
11 Mr. Beker and Newcon are represented by Jonathan Howden. Where  
12 are you, Mr. Howden? There you are. I can't see everybody  
13 over there. And that he's from the law firm of Winston and  
14 Strawn, here in San Francisco.

15           And Mr. Beker's is also represented by  
16 Martha Boersch, who is with the law firm of Jones Day, here in  
17 San Francisco, as well. Mr. -- and they represent both  
18 Mr. Beker and Newcon.

19           Mr. Prilik is represented by Mr. Osterhoudt --  
20 William Osterhoudt, who has offices here in San Francisco; and  
21 Frank S. Moore, also with offices here in San Francisco.

22           Thank you.

23           And is there anybody else at your table you need to  
24 introduce?

25           **MR. HOWDEN:** Yes. I'd like to introduce

1 Mr. Peter Biro. Mr. Biro is Mr. Beker's long-time Canadian  
2 counsel. And he's here strictly just to assist us during this  
3 proceeding.

4 **THE COURT:** Thank you.

5 Now, does anything you've heard so far about this  
6 case -- the names of the people introduced to you, or the  
7 name -- do they sound familiar to you? Do any of you know  
8 anything at all about this?

9 Okay. And do any of you have --

10 Who has a hand up? Yes, ma'am.

11 **PROSPECTIVE JUROR PRIEN:** I don't know anything about  
12 the case.

13 **THE COURT:** Can you stand up? And we'll give you a  
14 mic, because -- tell us your name first, after you get the mic.

15 **PROSPECTIVE JUROR PRIEN:** Okay.

16 **THE COURT:** And then what it is --

17 **PROSPECTIVE JUROR PRIEN:** Thank you. My name is  
18 Alisa Prien. I don't know anything about the case, but I do  
19 work for an orthopedic surgeon. And we see a lot of  
20 personal-injury attorneys. And maybe some of the names might  
21 is sound familiar as far as some of the attorneys.

22 **THE COURT:** I don't think any of you dabble  
23 in-personal injury cases, do you?

24 **MR. HOWDEN:** No, your Honor.

25 **PROSPECTIVE JUROR PRIEN:** I just wanted to clarify

1 that. Thank you, your Honor.

2 **THE COURT:** Thank you very much.

3 Yes, in the back.

4 **PROSPECTIVE JUROR REED:** Thank you. My name is  
5 Christie Reed. And I know Jeane Hamilton from a past life.

6 **THE COURT:** Oh, yes. Well, that might be  
7 interesting.

8 **MS. HAMILTON:** You look fabulous.

9 **PROSPECTIVE JUROR REED:** Thank you.

10 **THE COURT:** Well, with those niceties aside, can you  
11 remain standing for just a moment?

12 **PROSPECTIVE JUROR REED:** Yes, ma'am.

13 **THE COURT:** How well did you know her, and under what  
14 circumstances?

15 **PROSPECTIVE JUROR REED:** We worked in the same office  
16 together for the same company. And it was probably early  
17 eighties, quite some time ago.

18 **THE COURT:** And are you an attorney, also?

19 **PROSPECTIVE JUROR REED:** No, I am not.

20 **THE COURT:** Okay. And have you maintained a  
21 friendship over the years, and see each other?

22 **PROSPECTIVE JUROR REED:** We have not.

23 **THE COURT:** And how would you feel about sitting on a  
24 case where you're going to have to be fair to both sides?

25 **PROSPECTIVE JUROR REED:** That would be --

1           **THE COURT:** But you know Ms. Hamilton, and you think  
2 she can do no wrong, and so --

3           **PROSPECTIVE JUROR REED:** I worked with her,  
4 your Honor.

5           **THE COURT:** Ha, ha. Maybe -- well, on the other  
6 hand, are you a little concerned maybe this is not such a good  
7 case, if she's litigating it?

8           **PROSPECTIVE JUROR REED:** I think I would be very  
9 impartial.

10          **THE COURT:** Okay. Thank you. And did you get on the  
11 jury with further questions I'm sure the attorneys may have  
12 some questions of you. And your last name is?

13          **PROSPECTIVE JUROR REED:** Is "Reed."

14          **THE COURT:** Reed. Okay. Thank you very much.

15          **PROSPECTIVE JUROR REED:** Thank you.

16          **THE COURT:** Anyone else know any of these persons who  
17 were introduced to you, or anything about them, or anything  
18 about the case, or the company?

19                 Now the company, ATN, whose name I mentioned, is also  
20 a company that's headquartered in South San Francisco, I  
21 believe. And it's -- what is it? It's American -- something.

22          **MS. HAMILTON:** American Technologies Network.

23          **THE COURT:** Okay. Does that sound familiar to any of  
24 you? Is it a company that you've heard of, or have friends or  
25 family that work for it?

1 And are there any of you who have family members,  
2 close personal friends, who -- or you, at any time, have worked  
3 for the United States Attorney's Office, or the FBI?

4 Yes, ma'am. Your name? And then tell us --

5 **PROSPECTIVE JUROR WHITNEY:** My name is Kelly Whitney.  
6 And my father is a retired FBI, San Francisco.

7 **THE COURT:** And what was his last name?

8 **PROSPECTIVE JUROR WHITNEY:** Whitney.

9 **THE COURT:** Also "Whitney"?

10 **PROSPECTIVE JUROR WHITNEY:** Yes, ma'am.

11 **THE COURT:** How long ago did he retire?

12 **PROSPECTIVE JUROR WHITNEY:** About maybe 15 years ago.

13 **THE COURT:** Okay. And did he work in this office  
14 here in San Francisco?

15 **PROSPECTIVE JUROR WHITNEY:** I believe so.

16 **THE COURT:** Okay. Okay. Thank you.

17 **PROSPECTIVE JUROR WHITNEY:** You're welcome.

18 **THE COURT:** And, yes, I think this is a gentleman  
19 right here, Mr. Bowser.

20 **PROSPECTIVE JUROR NOVICK:** I don't know if it's  
21 relevant, but I have a cousin who just retired last year from  
22 the FBI. He works in Virginia.

23 **THE COURT:** And do you ever talk to him about his  
24 job?

25 **PROSPECTIVE JUROR NOVICK:** Just peripherally; not,

1 you know, specifics.

2 **THE COURT:** Okay. Well, if -- if you get in the jury  
3 box, we'll see if there are any other questions about him;  
4 about that; but what is your name, sir?

5 **PROSPECTIVE JUROR NOVICK:** Oh. Sorry. My name's  
6 John Novick.

7 **THE COURT:** Novick. Okay. Thank you very much.

8 Anyone else have close family members or personal  
9 friends who work for the U.S. Attorney's Office, the FBI, or --

10 Now, obviously, a number of you may have served in  
11 the Army. And we may have some other questions about that, but  
12 the particular unit that we're talking about that does some  
13 contracting on behalf of the Department of Defense -- the  
14 United States Army Tank Automotive and Armaments Command -- any  
15 of you ever work for or have any family members or close  
16 personal friends who have worked for that entity within the  
17 United States Army?

18 Or any of you who have family members, close personal  
19 friends who work for the Department of Defense or, you work,  
20 for the Department of Defense, or you have worked for the  
21 Department of Defense?

22 Okay. A couple down here. Yes.

23 **PROSPECTIVE JUROR SERMENO:** Hi. I'm Alicia Sermeno.  
24 For about 15 months, between college and teaching school, I was  
25 a secretary in the then-called "Star Wars" program at the

1 Vick's International, in San Leandro. I've also had a  
2 long-term relationship with a V.P. at SAIC. And one of his  
3 jobs is to -- he works with tanks, designing hybrid-powered  
4 combat vehicles.

5 **THE COURT:** Okay. And anything about that  
6 relationship or your experience that would in any way influence  
7 how you would listen to and decide a case that involves charges  
8 of -- related to contracts with TACOM?

9 **PROSPECTIVE JUROR SERMENO:** I don't think so.

10 **THE COURT:** Well, we'll explore that further if we  
11 need to later. Okay?

12 And there was another woman who had her hand up.  
13 Yes.

14 **PROSPECTIVE JUROR ASCHWALD:** Michelle Aschwald. My  
15 son is a U.S. Naval officer, mission control and fire control  
16 officer, on a destroyer based in Mississippi, soon to be home  
17 ported in San Diego. And my husband is a U.S. Naval officer,  
18 retired reserve.

19 **THE COURT:** Okay. Thank you very much.

20 Anyone else who's -- where they're employed by the  
21 Department of Defense?

22 **PROSPECTIVE JUROR SERMENO:** Yes. I'm sorry. I have  
23 a brother who's retired military. Army.

24 **THE COURT:** Mm-hm. Okay. Thank you.

25 Yes, ma'am.

1           **PROSPECTIVE JUROR KAMEOKA:** My name's  
2 Kathleen Kameoka. My dad's retired from the Air Force. And my  
3 nephew, who's very close to me, just retired this last year  
4 from the Army, and served over in Afghanistan twice.

5           **THE COURT:** Okay. Thank you.

6           And I'm not asking about military service right now.  
7 It's really more, you know, people who are employed by the  
8 agency itself -- Department of Defense -- rather than in one of  
9 the branches of service.

10          **PROSPECTIVE JUROR HARRIS:** I have a son-in-law who's  
11 in the Defense Intelligence Agency, in Washington, D.C.

12          **THE COURT:** Okay. And --

13          **PROSPECTIVE JUROR HARRIS:** I don't know what he does  
14 there.

15          **THE COURT:** He's not supposed to tell you, I think,  
16 is why you don't know, right?

17          Okay. Thank you. And your name is, again?

18          **PROSPECTIVE JUROR HARRIS:** Angela Harris.

19          **THE COURT:** Harris?

20          **PROSPECTIVE JUROR HARRIS:** Harris.

21          **THE COURT:** H-a double r-i-s?

22          **PROSPECTIVE JUROR HARRIS:** Yes.

23          **THE COURT:** Okay. Thank you very much.

24          Anyone else?

25          Then what we're going to start doing now, Mr. Bowser,

1 is calling jurors to be seated. And we're going to have to  
2 rearrange you. I'm sorry about this. So we will have some of  
3 you getting up and moving, and so forth, but we're going to  
4 call the requisite number that we need to call in order to ask  
5 the remainder of our questions. And there will be a number of  
6 them.

7           So the first names that are called should fill in the  
8 jury box up here. Fill in the first row starting with the  
9 first seat closest to the bench. And then fill in the back row  
10 the same way, filling in the first seat closest to the bench,  
11 and then filling in that row. And then we'll start using the  
12 first couple of rows over here. So --

13           **THE CLERK:** Okay. Margarita Stathis.

14           **THE COURT:** How do you spell the last name?

15           **THE CLERK:** S-t-a-t-h-i-s.

16           **THE COURT:** Ms. Stathis, if you'd take the first seat  
17 in the first row, please.

18           **THE CLERK:** Angela Harris.

19           **THE COURT:** And you just come right up and sit next  
20 to here, and we'll fill in that front row.

21           **THE CLERK:** Rachael Gannaway. Ernest Bonacum.  
22 Stanley Lau. Rex Maffey. And Alberta Davidson.  
23 Judith Martine.

24           **THE COURT:** And, Ms. Martine, if you'd take the first  
25 seat in the back row, please.

1           **THE CLERK:** Victor Wong. Susanna Evans.

2 Cindie Watson.

3           **MS. HAMILTON:** I'm sorry. What was the last name?

4           **THE CLERK:** Watson. W-a-t-s-o-n.

5           **MS. HAMILTON:** Thank you.

6           **THE CLERK:** Mm-hm. Daniel Schwartzler.

7 Risa Calderon. Kelly Whitney.

8           **THE COURT:** Okay. Could I ask those of you who are  
9 in the front row here to find some other seats now in the  
10 courtroom? I apologize. You know, this is a smaller  
11 courtroom, so we have to rearrange. That's all right. Over  
12 here. You're okay. You can stay. You can stay, but this just  
13 on the front row over here. And then what we're going to do is  
14 fill in that first row. And then we'll proceed from there.  
15 And probably some of you in the second row are going to have to  
16 move.

17           **THE CLERK:** Ellen Cannon. Ellen Cannon.

18 Timothy Black.

19           **THE COURT:** And if you'd come to the far end of that  
20 row, Ms. Cannon.

21           **THE CLERK:** Brian Costa. Lionell Chaney.

22 John Novick. Yue Chen. Jason Watts. Alicia Sermenio.

23           **THE COURT:** Well, you're back in the first row.

24           **THE CLERK:** You need to clear the second row?

25           **THE COURT:** Now we need to clear out the second row.

1 I'm sorry about that. If you can, find other seats. And we're  
2 going to use that row. I apologize. It's always a good idea  
3 to get up and stretch, right?

4 **MS. HAMILTON:** Can you spell the last names for us?

5 **THE CLERK:** Spell the last names for you? Sure.

6 Margo Thompson. T-h-o-m-p-s-o-n.

7 **MS. HAMILTON:** Thanks. Deanna Merritt.

8 M-e-r-r-i-t-t. Paul Cardenas. C-a-r-d-e-n-a-s.

9 Natasha Kapoor-Acuna. K-a-p-o-o-r. Acuna. There you go.

10 Brenna Gibson. Vladmir Butenko. B-u-t-e-n-k-o. And

11 Julie Novitski-Godmintz.

12 **THE CLERK:** Eight more in that row.

13 **THE COURT:** That's seven. No. That's seven.

14 **THE CLERK:** Okay. And Richard Ramos.

15 **THE COURT:** Now what we're going to do is use that  
16 final row back there.

17 **THE CLERK:** Right.

18 **THE COURT:** Okay. I'm sorry. I'm going to have to  
19 disturb all of you people in the back row. See if you can come  
20 over here.

21 **UNIDENTIFIED SPEAKER:** The whole back row?

22 **THE COURT:** Back row. Front row. In my opinion, you  
23 can find room. I mean, you're not all going to get in into the  
24 back row; that's for sure.

25 Okay. Kathleen Kameoka. K.A.M.E.O.K.A.

1 Sasha Yamamoto. Christie Reed. Danielle Rosenthal.  
2 Mary Guedon. Guedon. G-u-e-d-o-n. Rajeev Ramchandani.  
3 R-a-m-c-h-a-n-d-a-n-i. And Rebecca Dickinson. That's it.

4 **THE COURT:** Okay. That should be enough to cover all  
5 of the challenges that we've agreed to, counsel.

6 The questions I'm going to ask you will be addressed  
7 to those whose names have been called and seated over here. So  
8 the rest of you, if you could, listen carefully to the  
9 questions and the answers, in case you need to replace one of  
10 the jurors here. Then be prepared to tell us, if you have any  
11 answers that would be important to our inquiry today, because,  
12 of course, what we want to do is make sure that we select a  
13 jury that will be fair and impartial to both sides in the case,  
14 and understanding what the nature of the case is, and what your  
15 obligations are as jurors; and that is to follow the  
16 instructions as to the law that you're given, but to decide,  
17 after hearing the evidence and the witnesses and everything in  
18 the case that amounts to evidence, whether -- what facts you  
19 believe and what witnesses you believe, and so forth, and then  
20 apply the law to the facts that you find, in order to decide  
21 whether the Government has proven the charges against the  
22 defendants by what is called "proof beyond a reasonable doubt."

23 So, first of all, it doesn't do me any good to ask  
24 "Can you hear me," right, because if somebody couldn't hear me,  
25 they wouldn't raise their hand, or "Can you not hear me?"

1 Excuse me. So everybody that can hear me, raise your hand.  
2 And then see if someone seated next to you doesn't raise their  
3 hand, and then let us know. Anybody next to you that didn't  
4 raise their hand? Okay. So I'm assuming everybody can hear.

5 If at any point my voice falls down and you can't  
6 hear, then please let us know. Raise your hand. Just let us  
7 know, because it's important that you hear the questions and  
8 the answers of the other persons as well.

9 Now, I'm advised that the following persons may be  
10 called as witnesses. And there may have been some changes in  
11 this as well; but also, are there any custodian witnesses that  
12 are going to be called, or is that all ironed out?

13 **MS. HAMILTON:** We don't believe so, your Honor.

14 **THE COURT:** Okay. So -- and so then I'm just going  
15 to go through these names. And I'll ask you if there are any  
16 other names I should give the jury.

17 Either these persons are going to be called as  
18 witnesses, or they are going to be -- their names are going to  
19 come up in the course of the trial. So the question is whether  
20 you know any of these persons, or know anything about them.

21 Irina Barskova, who probably will be serving as an  
22 interpreter, or explaining the meaning of certain words in  
23 Russian, because -- and there are going to be a number of  
24 conversations and other information that's in Russian, and will  
25 be translated for you. So Irina Barskova.

1 Greg Haynie, who is with the FBI.

2 Derek McAleer. That's with TACOM.

3 James McEdwards, who's an Army criminal  
4 investigation -- investigator.

5 From the Department of Justice, Aseem Padukone. Is  
6 he going to testify?

7 **MS. HAMILTON:** Yes, your Honor.

8 **THE COURT:** And Dmitry Rocklin, R-o-c-k-l-i-n., who  
9 is with American Technologies Network -- "ATN" -- that you're  
10 going to hear a lot about in this trial. That's the company I  
11 said is from South San Francisco.

12 And Susan Sivok, S-i-v-o-k., from the FBI as well.

13 And then are there any other witnesses besides  
14 Byron Harding, and -- is that it?

15 **MR. OSTERHOUDT:** Possibly Jeffrey Bean, your Honor.

16 **THE COURT:** And Jeffrey Bean.

17 And those names may come up in the trial, or they may  
18 be called to testify as witnesses.

19 And Mr. Bean either was with or is with TACOM?

20 **MR. OSTERHOUDT:** He is with TACOM.

21 **THE COURT:** Okay. And Mr. Harding is with what  
22 company?

23 **MR. OSTERHOUDT:** Nivisys Corporation. It's a company  
24 in Phoenix, Arizona.

25 **THE COURT:** Okay. Do any of those names sound

1 familiar to you as persons that you may know?

2 Also, there is some information I think is important  
3 to know, because we want to know if any of this information  
4 will affect anybody's ability to be fair and impartial.

5 First of all, we've had -- the defendants have been  
6 introduced to you, and the attorneys who are representing them.  
7 Mendel Beker, who is one of the defendants -- goes by the name  
8 of "Michael Beker" -- is originally from Moldova, which at one  
9 time was a part of the Soviet Union. He's lived in Canada  
10 since 1990, and has been a Canadian citizen since 1994.

11 Also, Mr. Beker's company, which is Newcon, one of  
12 the defendants in the case, is a Canadian company.

13 Arie Prilik is also originally from Moldova. He  
14 immigrated to Israel in 1979 at the age of 11, and grew up and  
15 was educated in that country. He moved to Canada in 1990, and  
16 is a naturalized citizen of Canada, as well as holding dual  
17 citizenship in Israel.

18 Both Mr. Beker and Mr. Prilik are Jewish.

19 Now, also keep in mind that ATN is an American  
20 company in -- situated in South San Francisco.

21 Because all of those are sort of the background facts  
22 about which I want to ask you some questions, is there anything  
23 first of all about any of that history -- being originally from  
24 the Soviet Union; being Jewish; being a citizen of Canada  
25 and/or Israel, in the case of Mr. Prilik -- that would

1 interfere in any way or affect in any way your ability to be  
2 fair to the defendants in this case?

3 Any one at all have any concerns about that?

4 Because, whether you're a citizen of the  
5 United States or you're a citizen of Canada or Israel or  
6 anywhere else, when you're charged before the courts of this  
7 country with criminal charges, you are entitled to have a fair  
8 trial, and to have the same benefits under our Constitution  
9 that every defendant in a criminal case has. And I'll go over  
10 those with you in a minute. Does anybody have any concern at  
11 all about your ability to be fair to these defendants, for any  
12 of those reasons?

13 Also, because Newcon is a Canadian company -- and  
14 then you're going to hear testimony about ATN, which is a U.S.  
15 company -- is there anything about that that is going to affect  
16 you? Do you think that you have any feeling about contracts  
17 with Canadian companies, or companies from other countries, as  
18 opposed to contracts with the U.S. companies? Anyone has any  
19 feelings about that, that you think would affect how you listen  
20 to and decide this case?

21 Now, we've told you who the witnesses are who may be  
22 called to testify; but also, we're going to have people who  
23 testify, as I've mentioned the names, but they are from TACOM,  
24 and also from ATN, and something called "Metropolitan  
25 Interpreters and Translators." Now, I've ask you about TACOM,

1 but any of you have any family members or close personal  
2 friends or anyone who works for Metropolitan Interpreters and  
3 Translators, or American Technology Networks, namely "ATN"? I  
4 think I asked you that earlier as well.

5 And have any of you personally or do you have any  
6 family members or close personal friends who have ever been  
7 employed by -- I think we asked earlier about the FBI, but that  
8 question is still out there, if you want to -- if you have  
9 anything to add to that. This is not just you, but family  
10 members or close personal friends; people that you interact  
11 with on a regular basis, and talk about their work and, you  
12 know, what they do, and so forth; those kinds of friends. Any  
13 of you have any family members or close personal friends or  
14 you, yourself, who have worked for the FBI or any other  
15 law-enforcement agency: Federal, state, local?

16 And Mr. Bowser is going to be busy running around  
17 with the mic.

18 Did you have your hand up, Ms. Harris?

19 **PROSPECTIVE JUROR HARRIS:** Yes, I did. Just my  
20 son-in-law, who works for the Defense Intelligence Agency.

21 **THE COURT:** Okay. And this does involve, after all,  
22 an agency of the Department of Defense, essentially.

23 Would you tend to think: Well, it's the Department  
24 of Defense; you know, they probably have the better argument,  
25 and I tend to lean toward them?

1           **PROSPECTIVE JUROR HARRIS:** Possibly. It's difficult.  
2 I really don't know what he does there.

3           **THE COURT:** Mm-hm. That's all right. And you're not  
4 able to tell us, and not required to; but is there anything at  
5 all about the fact that the Department of Defense is involved  
6 that you think would influence how you would listen to and  
7 decide this case?

8           **PROSPECTIVE JUROR HARRIS:** I would -- I think I could  
9 be fair.

10          **THE COURT:** Well, maybe this is a good time to --  
11 before I follow up on that question with everybody else, you  
12 understand that in a criminal case, a defendant is entitled to  
13 the presumption of innocence. A defendant is charged in a  
14 criminal case with something called an "indictment." And the  
15 indictment is just a means of telling the defendant what he's  
16 charged with.

17               It's sort of like, you know, if you have a neighbor  
18 who was upset with a tree you've got on your property. And  
19 they sue you, you know, in small-claims court.

20               That doesn't mean -- the fact that they've sued  
21 you -- that there is any truth to the allegations. You go.  
22 You get a summons and a complaint from them, or from the Court.  
23 And then you go in to court, but they have to prove their  
24 claim. It's just a means of getting you into court.

25               And that's what an indictment is. It is to put the

1 defendant on notice of what he is charged with, and that -- you  
2 know. And this is what the Government is going to have to  
3 prove at trial; but it's essentially a means of notifying a  
4 defendant of the charges against him, because that's only fair.  
5 Right? You know, you should not have to stand trial on charges  
6 when you don't know what they are. And so in this country that  
7 doesn't happen. You're told what the charges are; but the  
8 indictment is not evidence of the crime that is alleged in the  
9 indictment. It is merely the means of notifying the defendant  
10 of the charges.

11 And then this is where, in the course of the trial,  
12 the Government is required to prove by proof beyond a  
13 reasonable doubt the charges, as to each and every element of  
14 the charges. And the Government always has that  
15 responsibility.

16 The defendant is presumed innocent. And in this  
17 case, the defendants have entered please of not guilty, and  
18 they are entitled to stand by their presumption of innocence.  
19 They may or may not testify. They can't be compelled to  
20 testify. It's up to them to decide whether they will testify.  
21 And you can't presume anything from a defendant not testifying,  
22 because it's always the Governments' responsibility to prove  
23 the charges by proof beyond a reasonable doubt.

24 Now, does anybody have a problem with that, where you  
25 think: You know, this just make it too tough on the

1 Government, because, you know, they've got to bring these  
2 cases, and they've got to put on all of this evidence, and then  
3 they've got to prove beyond a reasonable doubt? Why couldn't  
4 it be just like the standard in civil cases?

5 Anybody have any problem with that?

6 Anybody think: Well, defendants are sitting there,  
7 and they're charged in an indictment? You know, there's the  
8 old saying, "Where there's smoke there's fire." There must be  
9 something to it? Anybody feel, well, it's more likely  
10 probable, as they're sitting here now, they're guilty, because  
11 otherwise, they wouldn't be here? Anybody who has that  
12 feeling?

13 You think that rule that we have or those rules that  
14 we have embodying the Constitution are good ideas?

15 **PROSPECTIVE JUROR DAVIDSON:** Yes.

16 **THE COURT:** Good, good. Okay. Okay.

17 Now, that doesn't mean that the Government has to,  
18 you know, prove beyond all doubt.

19 It's beyond what is called a "reasonable doubt." And  
20 we'll explain that as best we can to you, as best as the law  
21 allows us to explain it to you; but you have to follow the  
22 instructions as to the law that I give you.

23 Will there be anyone who would find it difficult to  
24 follow instructions that the Court gives, and says, "This is  
25 the law. It's up to you to find the facts from the evidence,

1 but apply the law," and not to, if you don't like the law,  
2 change it? If you don't like the law, then you have to write  
3 your Congressperson. Anyone who has a problem with that?  
4 They'd want to second-guess the law and say, "Well, I think  
5 that's a crazy law, and so I'm just not going to find" -- you  
6 know, whatever action you're going to take, independent of the  
7 instruction? Anybody would have a problem with that?

8 And I told you, just generally, the nature of the  
9 charges. When we get into the -- you know, the beginning of  
10 the trial, I will tell you what has to be proved in order to  
11 prove the charges.

12 Anyone have any reservation at all about anything I  
13 said?

14 I don't want to raise my hand? I might look like a  
15 fool? It won't make you look foolish. If you have reasonable  
16 questions about things, you should ask them.

17 Somebody in the back has their hand up. Yes. You  
18 really need to wave back there, because I don't see you that  
19 well. Yes. Tell us your name, and --

20 **PROSPECTIVE JUROR ROSENTHAL:** My names'  
21 Danielle Rosenthal. Is it Arie?

22 **THE COURT:** Yes.

23 **PROSPECTIVE JUROR ROSENTHAL:** I think he might be a  
24 patient at my work.

25 **THE COURT:** You think he may be what?

1           **PROSPECTIVE JUROR ROSENTHAL:** A patient at my work.  
2 I think I've met him before.

3           **THE COURT:** The gentleman seated --  
4 You want to stand up again, so she can see you?

5           **PROSPECTIVE JUROR ROSENTHAL:** Oh. I'm sorry. No.

6           **THE COURT:** He's from Canada. Not --

7           **PROSPECTIVE JUROR ROSENTHAL:** No. I'm sorry. Two  
8 over.

9           **THE COURT:** Oh. Mr. Beker?

10          **PROSPECTIVE JUROR ROSENTHAL:** I'm sorry. Mr. Beker.

11          **THE COURT:** You're from Canada also, right?

12          **DEFENDANT BEKER:** Yeah.

13          **PROSPECTIVE JUROR ROSENTHAL:** Okay. Sorry.  
14 Peninsula Periodontal, in San Mateo.

15          **THE COURT:** Have you had any dental work while you've  
16 been here in the States?

17          **PROSPECTIVE JUROR ROSENTHAL:** Okay. Sorry.

18          **DEFENDANT BEKER:** Not yet.

19          **THE COURT:** Not yet.

20          **PROSPECTIVE JUROR ROSENTHAL:** Sorry.

21          **THE COURT:** Well, I hope you don't have to, because  
22 we don't have the same health coverage that you have in Canada.

23                Okay. Anyone else? That didn't really -- that  
24 didn't have to do with the question I asked, but I'm glad you  
25 brought it up, because if you think you know anybody who's

1 involved in the case, you should tell us. So that's the right  
2 thing to do.

3 But anyone who says, "You know, those rules are just  
4 too tough on the government," or you know, "Too much slack for  
5 a defendant. And defendants -- if they're charged in an  
6 indictment, there must be some -- you know, they must be  
7 somewhat guilty, at least" -- anybody feel that way?

8 Okay. So you're willing -- oh, well. Okay. Okay.  
9 Yes, sir. You're -- I'm sorry. I don't know if I've got your  
10 name here, but --

11 **PROSPECTIVE JUROR WATTS:** Jason Watts.

12 **THE COURT:** Mr. Watts. Yes.

13 **PROSPECTIVE JUROR WATTS:** I have reservations about  
14 some parties being held accountable, and some parties not being  
15 held accountable by the Government.

16 **THE COURT:** Okay, but you understand the question  
17 here is not whether or not there's been any selective  
18 prosecution, for example, as sometimes it's called. That's a  
19 matter of law that's taken up if it is ever raised in a case.

20 The question is whether, in this particular case, the  
21 Government has proven the charges as to these defendants -- one  
22 or all of them -- beyond a reasonable doubt.

23 And each, of course, defendant is entitled to your  
24 independent consideration as well.

25 **PROSPECTIVE JUROR WATTS:** I understand, but because I

1 feel that the prosecutions are often -- often have political  
2 motives behind them, it makes me question the motives of the  
3 U.S. So --

4 **THE COURT:** Well, do you have any reason to --

5 **PROSPECTIVE JUROR WATTS:** Like I'm questioning, you  
6 know: Why these defendants? Why not Halliburton? Why not  
7 Blackwater?

8 **THE COURT:** Well, that may be, but that's not going  
9 to be the question in this case.

10 The question is only going to be: Can the Government  
11 prove the charges?

12 And the Government has to decide whom they're going  
13 to charge, and whom they're not going to charge. And if you  
14 don't agree with that, then I guess you write the Attorney  
15 General, or something, and/or your Congresspeople, but once the  
16 charges are brought, and a jury is impaneled, you have to  
17 decide whether the Government has proven or can prove those  
18 charges against the particular defendants that are before the  
19 Court, and not --

20 **PROSPECTIVE JUROR WATTS:** I understand.

21 **THE COURT:** -- not be concerned with any other case.  
22 Can you do that, or are you going to be wondering about that so  
23 much, you're going to be saying, "Well, if they haven't charged  
24 Halliburton, why should thee these guys get charged?"

25 **PROSPECTIVE JUROR WATTS:** All I can say is I'm highly

1 skeptical of the Government bringing cases of some people, and  
2 not others.

3 **THE COURT:** Do you know anything about these -- this  
4 case?

5 **PROSPECTIVE JUROR WATTS:** No, I don't know anything  
6 about that case.

7 **THE COURT:** And whether it's a meritorious case or  
8 not?

9 **PROSPECTIVE JUROR WATTS:** I don't know until I hear.

10 **THE COURT:** And already do you feel you're  
11 predisposed to the defendants in this case?

12 **PROSPECTIVE JUROR WATTS:** Yes.

13 **THE COURT:** Mm-hm. Okay. Well, I'll let the  
14 Government ask you a couple of questions and the defendants ask  
15 you a couple of questions, but -- and we'll see where it goes  
16 from there.

17 There was somebody else that had their hand up.

18 Thank you very much, Mr. Watts, yeah, for being very  
19 candid with us.

20 **PROSPECTIVE JUROR GUEDON:** My name is Mary.

21 **THE COURT:** Could you stand, please, because I can't  
22 see you? And tell us your name.

23 **PROSPECTIVE JUROR GUEDON:** My name is Mary Guedon.

24 And I harbor very strong feelings against corporate scamming of  
25 one type or another. Part of it is my affiliation with a

1 women's leftist organization. And we frequently demonstrate  
2 against corporations. And I'm not sure that I can be impartial  
3 in these proceedings.

4 **THE COURT:** Well, we have two individuals and a  
5 corporation for which, you know, which -- one of them, I guess,  
6 owns, and one of them works.

7 But the question -- you know, so the question is:  
8 Can you be fair to them, because they do have a corporate  
9 entity that also is charged, and to the corporate entity, in  
10 deciding whether the Government can prove the charges?

11 **PROSPECTIVE JUROR GUEDON:** I'm not certain that I  
12 could.

13 **THE COURT:** And, well, Ms. Hamilton and defense  
14 counsel -- I'm not sure which of you: Mr. Howden;  
15 Mr. Osterhoudt; whoever -- do you wish to stipulate to excuse  
16 these two defendants [sic] -- or two jurors? Excuse me. I'm  
17 sorry. Two jurors?

18 **MR. OSTERHOUDT:** I think so.

19 **MR. HOWDEN:** We're prepared to stipulate, your Honor.

20 **THE COURT:** To both of them?

21 **MR. HOWDEN:** Yes.

22 **MS. HAMILTON:** We will as well, your Honor.

23 **THE COURT:** So I'm going to excuse you, Mr. Watts.  
24 And I'll excuse you, Mr. Guedon. And maybe there will be a  
25 case that doesn't involve a corporation, or a civil case.

1 Thank you very much. And if you'd go back to the jury room,  
2 please.

3 **PROSPECTIVE JUROR RAMOS:** Good morning, your Honor.  
4 Richard Ramos. You asked earlier about law enforcement.

5 **THE COURT:** Yes. I'll get back to that in a minute.  
6 Hold on just one minute. Hold it there.

7 Mr. Bowser, you have to come tripping back up here  
8 and call two jurors to be seated in those two seats.

9 **THE CLERK:** John Gillespie.

10 **THE COURT:** Mr. Gillespie, if you'd take this seat  
11 that was just vacated up here in this first row.

12 **THE CLERK:** Robert Miller.

13 **THE COURT:** And, Mr. Miller, that's it. Right there  
14 in that spot. Thank you very much.

15 Mr. Gillespie and Mr. Miller, did you hear all of the  
16 questions that were asked of the other jurors, and their  
17 answers?

18 **PROSPECTIVE JUROR GILLESPIE:** Yes, indeed.

19 **THE COURT:** Okay. Did any of them trigger any  
20 thought in your mind? You know. "When I get there, I'd better  
21 tell them about this," or, "This is how I feel," or "This is  
22 some -- you know, someone I know," or whatever that might be  
23 involved in --

24 **PROSPECTIVE JUROR GILLESPIE:** No. Not at all.

25 **THE COURT:** And Mr. Miller?

1           **PROSPECTIVE JUROR MILLER:** No.

2           **THE COURT:** Okay. Thank you.

3           Now back to law enforcement, and Mr. Ramos.

4           **PROSPECTIVE JUROR RAMOS:** I'm a retired police  
5 officer, and currently teach criminal justice administration at  
6 community-college level.

7           **THE COURT:** And where were you a police officer?

8           **PROSPECTIVE JUROR RAMOS:** Berkeley.

9           **THE COURT:** And where are you teaching?

10          **PROSPECTIVE JUROR RAMOS:** I'm teaching at Contra  
11 Costa College, in San Pablo.

12          **THE COURT:** Good. Are you enjoying that experience?

13          **PROSPECTIVE JUROR RAMOS:** It's fun. It's fun. We're  
14 off for a break right now.

15          **THE COURT:** Okay. Well, anything at all about what  
16 you've learned in your experience that you think would tend you  
17 toward Government in this case, or the defendant?

18          **PROSPECTIVE JUROR RAMOS:** It's possible. I've worked  
19 a lot of white-collar crime investigations in the Special  
20 Investigations Bureau at Berkeley. So it just depends on what  
21 I hear, but I might have some preconceived notion that could  
22 come through.

23          **THE COURT:** Well, what? You want to give us a hint  
24 what might that be?

25          **PROSPECTIVE JUROR RAMOS:** It just depends on what I

1 hear, you know.

2 **THE COURT:** Well, can you keep an open mind through  
3 all of the proceedings, and hold --

4 **PROSPECTIVE JUROR RAMOS:** I will certainly try.

5 **THE COURT:** -- hold the Government to the burden of  
6 proof; that they will have to prove it beyond a reasonable  
7 doubt?

8 **PROSPECTIVE JUROR RAMOS:** I would certainly try.

9 **THE COURT:** And you think just automatically, because  
10 of the -- you know, some of the white-collar cases you've  
11 worked on, "Aha! You know, this is another one"?

12 **PROSPECTIVE JUROR RAMOS:** It's possible.

13 **THE COURT:** Mm-hm. Well, I'll let the attorneys  
14 follow up with some questions, and we'll see where that goes.

15 Yes. Seated right next to you is --

16 **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** I'm  
17 Julie Novitski Godmintz.

18 **THE COURT:** Yes.

19 **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** My husband  
20 currently works for the San Francisco Police Department as a  
21 police service aide. I, upon occasion, also work for the  
22 Department, for their training of recruits.

23 **THE COURT:** What detail is he on, or --

24 **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** Oh, he's at the  
25 airport.

1           **THE COURT:** I see. Anything at all about your  
2 experiences with the Police Department or his experiences that  
3 you think would affect your ability to be fair in this case?

4           **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** No, I don't  
5 believe so.

6           **THE COURT:** Do you have any preconceptions about it,  
7 toward one side or the other?

8           **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** Not  
9 particularly.

10          **THE COURT:** Well, how about just generally?

11          **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** No. I could be  
12 impartial, I hope.

13          **THE COURT:** Okay. Thank you. Anyone else whose  
14 family member, or you, or a close personal friend works for law  
15 enforcement?

16          **PROSPECTIVE JUROR SCHWARTZLER:** Hello. My names'  
17 Dan Schwartzler. My cousin works for the Dublin Police  
18 Department. He's been doing that. And he also worked for  
19 Oakland as an undercover police officer.

20          **THE COURT:** Okay. Did he ever do any white-collar  
21 kind of investigation work; that kind of thing?

22          **PROSPECTIVE JUROR SCHWARTZLER:** Not to my knowledge.  
23 Not that he's directly shared with me.

24          **THE COURT:** And what's his relationship to you? He's  
25 a cousin?

1           **PROSPECTIVE JUROR SCHWARTZLER:** He's my cousin, yeah.

2           **THE COURT:** Do you talk with him about his work?

3           **PROSPECTIVE JUROR SCHWARTZLER:** Yes.

4           **THE COURT:** And do you have a particular attitude  
5 toward police officers; that they're more likely to tell the  
6 truth or less likely to tell the truth than other people?

7           **PROSPECTIVE JUROR SCHWARTZLER:** I guess part of me,  
8 kind of going backwards to something that you said earlier,  
9 tends to side with the Government a little bit. How you  
10 mentioned, you know, "If there's smoke, there's fire," part of  
11 me -- my gut reaction to that, after I kind of thought about  
12 it, is that, yeah, that's probably true; but I would hope that  
13 I could be impartial, but I don't know.

14           **THE COURT:** Well, can you -- can you -- can you just  
15 sort of go by the book?

16           **PROSPECTIVE JUROR SCHWARTZLER:** Mm-hm.

17           **THE COURT:** And say, okay. These are defendants who  
18 are charged in an indictment. The indictment is not evidence.  
19 I'm going to have to hear what the witnesses testify to, and  
20 keep an open mind, and keep an open mind through the time that  
21 the Governments' witnesses testify. And if the defendants call  
22 witnesses or testify, that -- they don't have to. They can  
23 rely upon the state of the evidence by the Government, but it's  
24 always the Governments' job to prove their guilt by proof  
25 beyond a reasonable doubt.

1 And would you, if they decided not to testify, if  
2 they didn't call any witness, say, "Well, you know, that looks  
3 bad"?

4 **PROSPECTIVE JUROR SCHWARTZLER:** Yeah. I mean --

5 **THE COURT:** Yeah? "I expect them to get up there and  
6 speak for themselves."

7 **PROSPECTIVE JUROR SCHWARTZLER:** Right.

8 **THE COURT:** Is that what you would do?

9 **PROSPECTIVE JUROR SCHWARTZLER:** Well, I would want to  
10 kind of hear sort of firsthand.

11 **THE COURT:** Okay. We all want to hear things. You  
12 know, we like to know everything there is to know, right? But  
13 that's not the question.

14 We're not here, as I explained to one of my  
15 colleagues who was a canon-law expert, we're not here to find  
16 the ultimate truth, you know.

17 What we're here is to find out whether the Government  
18 can prove what they're required to prove under the law. Either  
19 they can, or they can't.

20 And you always have to presume that the defendant is  
21 innocent, until they've met that burden of proof. Can you do  
22 that?

23 **PROSPECTIVE JUROR SCHWARTZLER:** Yeah, I would  
24 definitely try.

25 **THE COURT:** I'm sure you're going to get some

1 questions from the lawyers about that.

2 Anyone else whose family member, close --

3 **PROSPECTIVE JUROR WHITNEY:** Hi. My name is  
4 Kelly Whitney.

5 **THE COURT:** Your father, I guess, was it?

6 **PROSPECTIVE JUROR WHITNEY:** My father is retired FBI,  
7 correct. And I have a few friends in law enforcement,  
8 including an ex-boyfriend, an ex-fiancé, and a cousin who is a  
9 police officer in Virginia; but I know a few police officers in  
10 Martinez, in Berkeley, San Francisco, Union City.

11 **THE COURT:** And anything about those -- your, you  
12 know, relationships with those or your knowledge of them and  
13 their work and so forth that would in any way affect how you  
14 would listen to and decide this case?

15 **PROSPECTIVE JUROR WHITNEY:** No, ma'am.

16 **THE COURT:** Do you think that law-enforcement  
17 officers are more likely to tell the truth than other people,  
18 or less likely?

19 **PROSPECTIVE JUROR WHITNEY:** Not one way or the other.

20 **THE COURT:** Because I'm going to give you, you know,  
21 instructions. And the law provides that you're to evaluate all  
22 witnesses by the same standards. Nobody, by virtue of their  
23 status, gets more credence than anyone else.

24 **PROSPECTIVE JUROR WHITNEY:** I agree.

25 **THE COURT:** You understand that what you have to look

1 for are things like the ability of the witness to see or hear  
2 that which they're testifying about; and, you know, how --  
3 what's the quality of their memory; and the manner and demeanor  
4 they testify; anything they have to either gain or not, you  
5 know, suffer by reason of their -- of the testimony; things  
6 like that; the kinds of things you use every day, but no -- to  
7 decide whether somebody's telling you the truth or not.

8 But nobody gets any extra points because of their  
9 status.

10 **PROSPECTIVE JUROR WHITNEY:** Right. I agree.

11 **THE COURT:** Do you understand?

12 **PROSPECTIVE JUROR WHITNEY:** Yes, ma'am.

13 **THE COURT:** Anybody have a hard time following that  
14 instruction? You don't get any extra points for being a  
15 law-enforcement officer, but you don't get any points taken  
16 off.

17 I remember one time picking a jury. And to that  
18 question, a woman with white gloves on -- I kid you not. An  
19 elderly woman with white gloves raised her hand. I thought:  
20 Oh, boy. Here it comes.

21 She got up and said, "I don't believe any of them."

22 And I was stunned. So I don't know what happened;  
23 what bit her; but of course, we said goodbye to her; but that  
24 really surprised me.

25 So, you see, you cannot tell a book by its cover.

1 And that's why, you know, we have to hear what these witnesses  
2 have to say.

3 Anybody disagree with that rule?

4 Now, a little bit more about this case. And we'll  
5 see if -- you know, what reaction you have to any of this.

6 I told you generally what -- what the charges are,  
7 but the defendants are alleged to have failed to disclose a  
8 particular financial arrangement that ATN came up in the course  
9 of their dealing with ATN and TACOM, and in connection with  
10 conversations they had with TACOM. So it really involves a  
11 failure to disclose certain information.

12 Now, does it necessarily involve an outright  
13 misstatement or misrepresentation?

14 Is there anyone who feels that, well, concealment is  
15 different from an outright misrepresentation, and I'd have a  
16 hard time holding someone responsible for that, even if the  
17 Court tells you that concealment can, under certain  
18 circumstances, you know, commit -- and -- be a crime, under the  
19 statute that we have?

20 Now, I know this is all in a vacuum, so it's a little  
21 hard I understand that, but anyone who says, "Well, if it's a  
22 concealment, I mean, you know, that's different from just  
23 outright lying"? Anyone at all?

24 Have any -- or is this one of those questions that --  
25 there's not enough information?

1 Does anyone think that -- that it's -- it really  
2 should not be against the law or make it -- or be a crime to  
3 obtain money by hiding information, as opposed to giving false  
4 information outright?

5 **PROSPECTIVE JUROR DAVIDSON:** Can you repeat that?

6 **THE COURT:** Does anyone feel that it should not be a  
7 crime to attempt to obtain money or make false representations  
8 or -- or to obtain money or property by hiding information, as  
9 opposed to just giving outright false information?

10 Do you -- and in connection with dealing with the  
11 Government, and in particular, the Defense Department in this  
12 case, do you think that the failure to disclose information is  
13 as important as the -- or less important than giving false  
14 information? Anybody have any attitude or feeling about that?

15 As I said, I know it's difficult to deal with it in a  
16 vacuum, but I'm just wondering if -- under certain  
17 circumstances, would you find that the failure to give certain  
18 information would not be improper?

19 Well, in the course of the trial, I will give you the  
20 instructions as to what amounts to concealment, and when it may  
21 constitute a violation of the law or not. Is there anyone who  
22 thinks that they would have difficulty in following that  
23 instruction, assuming that it's given to you in plain English?

24 And so you could live with that notion that  
25 concealment, under some circumstances, may be a violation of

1 the law? And then we'll get into all kinds of questions about  
2 whether it's material, and so on, and so forth; but anyone who  
3 thinks they would have a problem with that?

4 And I want to ask you just generally about things  
5 related to contracts with the Defense Department. You've  
6 probably read things in the newspaper and heard things about  
7 contracts with the Defense Department. Have any of you, first  
8 of all, or have family members or close personal friends who  
9 have entered into contracts with the Defense Department, or any  
10 other Government agency, actually, to provide services or goods  
11 to the Government?

12 Yes. It's Sermeno, or Sermeno?

13 **PROSPECTIVE JUROR SERMENO:** Sermeno.

14 **THE COURT:** Sermeno. Okay.

15 **PROSPECTIVE JUROR SERMENO:** Yeah.

16 My long-term relationship contracts with TARDEC.

17 **THE COURT:** Which is? That's another one of those  
18 acronyms I don't know.

19 **PROSPECTIVE JUROR SERMENO:** I don't know what that  
20 stands for itself, but he does a lot of defense work with the  
21 Army and stuff. It's the Department of Defense.

22 **THE COURT:** Do you talk with him about his work?

23 **PROSPECTIVE JUROR SERMENO:** Not frequently.

24 **THE COURT:** Mm-hm.

25 **PROSPECTIVE JUROR SERMENO:** Mainly because I don't

1 understand it.

2           **THE COURT:** And what is the nature of your  
3 employment?

4           **PROSPECTIVE JUROR SERMENO:** I'm a schoolteacher.

5           **THE COURT:** Okay. And I'm sure you could understand  
6 it, but maybe you just choose not to. Is that it?

7           **PROSPECTIVE JUROR SERMENO:** Well, when he starts  
8 going all scientific on me, it's way over my head.

9           **THE COURT:** I see. I see. Okay.  
10 Do you have any opinion about companies or persons  
11 who enter into contracts with the Government to provide goods  
12 and services?

13           **PROSPECTIVE JUROR SERMENO:** No. When I worked as a  
14 secretary, we were contracting -- or we were trying to gain  
15 contracts from the military. That was a long time ago.

16           **THE COURT:** Were you successful in doing so?

17           **PROSPECTIVE JUROR SERMENO:** I believe we were,  
18 occasionally.

19           **THE COURT:** Mm-hm. Mm-hm. And is there anything  
20 about that process that -- you think that the Government does a  
21 shoddy job?

22           **PROSPECTIVE JUROR SERMENO:** No, not at all.

23           **THE COURT:** Or they're too demanding, or --

24           **PROSPECTIVE JUROR SERMENO:** No.

25           **THE COURT:** And do you think that -- that there is a

1 practice of cheating them on a regular basis?

2 **PROSPECTIVE JUROR SERMENO:** No.

3 **THE COURT:** By a lot of companies?

4 **PROSPECTIVE JUROR SERMENO:** I don't know.

5 **THE COURT:** Anything at all that you've heard so far  
6 that would make you a little uneasy about being a juror in this  
7 case?

8 **PROSPECTIVE JUROR SERMENO:** No.

9 **THE COURT:** Okay. Thank you.

10 Anyone else? Any contracts with any governmental  
11 agencies to provide goods or services, including, of course,  
12 the Department of Defense?

13 And, in fact, what this involves is the contracting  
14 to provide night-vision goggles. Does anybody know anything  
15 about night-vision goggles? Do you have any expertise in that  
16 field?

17 Mr. Ramos.

18 **PROSPECTIVE JUROR RAMOS:** Just -- just having used  
19 them in training. Range programs, and stuff like that.

20 **THE COURT:** I see.

21 **PROSPECTIVE JUROR RAMOS:** I don't really know them.  
22 I couldn't build them for you.

23 **THE COURT:** Okay. And so you're not going to  
24 contract with anybody to provide them with night-vision  
25 goggles?

1           **PROSPECTIVE JUROR RAMOS:** No.

2           **THE COURT:** But is there anything at all that  
3 you've -- any experiences that you've had with any governmental  
4 agency that has left a bad taste in your mouth, and  
5 particularly with respect to the Department of Defense? Any of  
6 you? Any personal experience or family members who have had  
7 experiences?

8           Yes, ma'am.

9           **PROSPECTIVE JUROR KAPOOR-ACUNA:** Just --

10          **THE COURT:** I'd ask you stand up. And just tell us  
11 your last name, please.

12          **PROSPECTIVE JUROR KAPOOR-ACUNA:** Kapoor-Acuna.

13          **THE COURT:** Yes.

14          **PROSPECTIVE JUROR KAPOOR-ACUNA:** You said "bad  
15 experience." I'm not sure if that's my experience. I worked  
16 for Hewlett-Packard for ten years. On occasion, we'd get  
17 orders from the Government that we'd have to turn around  
18 quickly, for ink.

19          **THE COURT:** Was it a bad experience?

20          **PROSPECTIVE JUROR KAPUR-ACUNA:** I can't say it was a  
21 bad experience. Sometimes the priority was urgent, and I had  
22 to upset some other customers, but --

23          **THE COURT:** I see. I see. Okay, but would any --  
24 did any of that involve the Defense Department?

25          **PROSPECTIVE JUROR KAPUR-ACUNA:** Not that I'm aware

1 of.

2           **THE COURT:** Whatever that experience was, could you  
3 put that aside and just listen to what you hear in this case?

4           **PROSPECTIVE JUROR KAPUR-ACUNA:** I think so.

5           **THE COURT:** And decide it based on what you hear in  
6 this case only?

7           **PROSPECTIVE JUROR KAPUR-ACUNA:** Uh-huh.

8           **THE COURT:** Okay. Thank you.

9           Anyone else?

10           Now, do any of you have any negative feelings about  
11 law enforcement, generally? I mean, we do have some law  
12 enforcement that is involved here, and, of course, prosecutors.  
13 Any of you have any negative feelings or experiences?

14           Have any of you had family members or close personal  
15 friends or you, yourself, who have ever charged somebody else  
16 with fraud? Maybe sued them in a civil action, or been charged  
17 with fraud in a civil or criminal action? Have you been  
18 charged by somebody else? Ever been involved, or a family  
19 member involved, in fraud charges?

20           Yes. Let me see if I can figure out who you are.

21           **PROSPECTIVE JUROR GANNAWAY:** Gannaway.

22           **THE COURT:** Gannaway?

23           **PROSPECTIVE JUROR GANNAWAY:** Uh-huh. I was a child.  
24 My mother was taken to court for fraud, because she was  
25 claiming me as her child still, but I had never lived with her.

1 So she was trying to collect money on my behalf, apparently.

2 **THE COURT:** Mm-hm. Did you have to go to court and  
3 testify?

4 **PROSPECTIVE JUROR GANNAWAY:** No. I was too young.  
5 So --

6 **THE COURT:** Mm-hm. Mm-hm. And anything at all that  
7 you remember about that experience that would in any way -- I'm  
8 sure you remember about it, but --

9 **PROSPECTIVE JUROR GANNAWAY:** Yeah.

10 **THE COURT:** -- that would affect anything having to  
11 do with this case?

12 **PROSPECTIVE JUROR GANNAWAY:** No. I mean, I have been  
13 involved with the Government a lot, because I was a foster kid  
14 for a long time, but no. It was mostly, you know, feelings  
15 towards her, but not the Government.

16 **THE COURT:** Okay. Thank you.

17 **PROSPECTIVE JUROR GANNAWAY:** Yeah.

18 **THE COURT:** Thank you.

19 And have any of you -- or do you have family members  
20 or close personal friends who have been charged in a criminal  
21 case; or you have been a victim, and you have sought to have  
22 charges brought; or you've been a witness in a civil or a  
23 criminal case? Anyone up here at all?

24 Yes. In the back row. Is it Ms. Calderon?

25 **PROSPECTIVE JUROR CALDERON:** Yes. Yes. My name's

1 Risa. About when I was 18 -- I think it was four years ago --  
2 I had to testify. My father was pressing charges on a distant  
3 relative who had robbed our house. And we did press charges, I  
4 pointed him out in a line-up. I ended up testifying against  
5 him.

6 **THE COURT:** Mm-hm. And did you feel that you and  
7 your family were treated fairly in the process?

8 **PROSPECTIVE JUROR CALDERON:** Yes. Yes.

9 **THE COURT:** Any really negative feelings about that  
10 experience, other than it's not pleasant to go to court and  
11 have to testify?

12 **PROSPECTIVE JUROR CALDERON:** No, no feelings against,  
13 I guess, police, or anything like that, and the court; just  
14 against the family member. That's all.

15 **THE COURT:** Yes, yes. Okay. And, as you sit here  
16 today, if you're selected to sit on this jury, can you assure  
17 the defendants they would get a fair trial from you?

18 **PROSPECTIVE JUROR CALDERON:** Absolutely.

19 **THE COURT:** Okay. Thank you.

20 Who else had their hand up?

21 Yes. Mr. Chaney.

22 **PROSPECTIVE JUROR CHANEY:** Chaney.

23 **THE COURT:** Mr. Chaney.

24 **PROSPECTIVE JUROR CHANEY:** I testified in court for a  
25 police officer once, about five years ago.

1           **THE COURT:** For or against the police officer?

2           **PROSPECTIVE JUROR CHANEY:** On behalf of the police.

3           **THE COURT:** I see. And how did that come about? And  
4 can you speak into the mic just a little?

5           **PROSPECTIVE JUROR CHANEY:** Oh, okay. Yes. The  
6 police officer was assaulted, and I was a witness.

7           **THE COURT:** I see. I see. And did you feel that you  
8 were treated fairly and everybody else was treated fairly in  
9 the process?

10          **PROSPECTIVE JUROR CHANEY:** I believe so, yes.

11          **THE COURT:** Okay. And anything at all about that  
12 experience that would affect how you would listen to and decide  
13 this case?

14          **PROSPECTIVE JUROR CHANEY:** No.

15          **THE COURT:** And does that tell us anything about  
16 whether you would be pro prosecution, or more likely to be for  
17 the defendant?

18          **PROSPECTIVE JUROR CHANEY:** No. I can be completely  
19 impartial.

20          **THE COURT:** Okay. Thank you very much.

21                 Who else had their hand up? It was in the next row.

22          **PROSPECTIVE JUROR MERRITT:** Hello. My name is  
23 Deanna Merritt.

24          **THE COURT:** Yes.

25          **PROSPECTIVE JUROR MERRITT:** And I had a family member

1 that has been charged and convicted of grand theft and drug  
2 possession.

3 **THE COURT:** And was this in California?

4 **PROSPECTIVE JUROR MERRITT:** Yes.

5 **THE COURT:** And did you attend any of the  
6 proceedings?

7 **PROSPECTIVE JUROR MERRITT:** No.

8 **THE COURT:** From what you know about the case, do you  
9 believe he was treated fairly?

10 **PROSPECTIVE JUROR MERRITT:** Yeah. She was guilty.

11 **THE COURT:** "She." She was treated.

12 You see? I just jumped to the conclusion, right?

13 **PROSPECTIVE JUROR MERRITT:** You did.

14 **THE COURT:** She was treated fairly?

15 **PROSPECTIVE JUROR MERRITT:** Yeah. Yeah.

16 **THE COURT:** And anything at all about that experience  
17 that you might think would color how you would listen to and  
18 decide this case?

19 **PROSPECTIVE JUROR MERRITT:** No, not at all.

20 **THE COURT:** Okay. Thank you.

21 And I guess it's -- oh, yes. Thank you.

22 Ms. Thompson.

23 **PROSPECTIVE JUROR THOMPSON:** Yes. I have two things.

24 My former husband was a criminologist at Fresno  
25 State, and did -- was consulted a number of years ago by the

1 FBI, mostly in the case of the Unabomber.

2 And my oldest son is an attorney for Triple A in  
3 Fresno, and he does prosecute fraud. So --

4 **THE COURT:** Okay. And anything at all about what  
5 you've learned from them and their experiences that you think  
6 would affect your impartiality in this case?

7 **PROSPECTIVE JUROR THOMPSON:** I'm not sure. My son  
8 will tell me things once in a while. And so I think I tend to  
9 set -- you know, side with him; that people are trying to take  
10 advantage of the system --

11 **THE COURT:** Mm-hm.

12 **PROSPECTIVE JUROR THOMPSON:** -- in that case with the  
13 insurance company.

14 **THE COURT:** So what happens when you hear "fraud"?  
15 You -- your ears perk up, and you say, "Aha! I know"?

16 **PROSPECTIVE JUROR THOMPSON:** I don't -- I'm hoping  
17 that I am impartial.

18 **THE COURT:** Well, can you promise both sides that you  
19 will be, throughout this case?

20 **PROSPECTIVE JUROR THOMPSON:** Yes.

21 **THE COURT:** And that you won't let whatever you've  
22 learned in these other situations color what you decide, but  
23 you'll listen to it, and decide it based on the evidence you  
24 hear here?

25 **PROSPECTIVE JUROR THOMPSON:** Yes.

1           **THE COURT:** Okay. Thank you.

2           And I think -- yes. We'll come up to you. And there  
3 was someone in the back row. We want to keep Mr. Bowser, our  
4 courtroom deputy, walking around. This is how he gets his  
5 exercise.

6           Yes, ma'am.

7           **PROSPECTIVE JUROR DICKINSON:** Rebecca Dickinson. I'm  
8 a nurse. And several times I've been called upon by the  
9 hospital attorneys to give depositions about certain cases  
10 where people were suing the hospital, but I've never been  
11 called to court.

12          **THE COURT:** I see; but you've been called as a  
13 witness or had your deposition taken, right?

14          **PROSPECTIVE JUROR DICKINSON:** Yes.

15          **THE COURT:** Okay. And did you feel that sometimes  
16 the charges that were brought by those persons were phony, or  
17 they were not substantiated?

18          **PROSPECTIVE JUROR DICKINSON:** Yes. Yes. I mean, on  
19 occasion, it was -- it was justified; but on other occasions,  
20 no.

21          **THE COURT:** Okay. And so anything at all about  
22 that -- there are good cases, and there are bad cases, right?

23          **PROSPECTIVE JUROR DICKINSON:** Correct.

24          **THE COURT:** Anything at all that is going to affect  
25 how you would listen to and decide this case?

1           **PROSPECTIVE JUROR DICKINSON:** I don't think so.

2           **THE COURT:** Okay. Thank you very much. And I think  
3 there's a gentleman up here in the front row. And I should be  
4 able to figure your name out from my chart here.

5           **PROSPECTIVE JUROR MAFFEY:** Good morning. About 30  
6 years ago, I was working for an alarm company, and I was called  
7 in to testify about how an alarm was tripped. That was my only  
8 testimony I've ever given in court.

9           But I also have a close friend who's a correctional  
10 officer at the men's colony at Atascadero State.

11           I believe it is -- those are the only two points.

12           **THE COURT:** Yes. And what about any of those  
13 experiences might possibly affect how you would listen to and  
14 decide this case?

15           **PROSPECTIVE JUROR MAFFEY:** Nothing whatsoever.

16           **THE COURT:** Okay. Okay. Thank you.

17           **PROSPECTIVE JUROR MAFFEY:** You're welcome.

18           **THE COURT:** Anyone else?

19           **PROSPECTIVE JUROR NOVICK:** Your Honor, this is off  
20 topic. What's the protocol? Sixty-second bathroom break,  
21 possibly?

22           I appreciate it.

23           **THE COURT:** Just go ahead. How long have we been at  
24 this?

25           **THE CLERK:** An hour and five minutes.

1           **THE COURT:** Generally, around an hour and a half or  
2 so, I'd give everybody a break, but why don't we do this, so  
3 that we don't miss the general questions? I think what we lost  
4 two people there that left. Why don't we start with you,  
5 Ms. -- you each have a sheet of paper, so that you can tell us  
6 about yourselves. And we'll start doing that. And then, when  
7 the others come back, we'll get to the general questions again.

8           Is it Ms. -- I can't read my own writing.  
9 Ms. Stathis?

10           **PROSPECTIVE JUROR STATHIS:** Yes.

11           **THE COURT:** Just go down the list.

12           **PROSPECTIVE JUROR STATHIS:** My name's  
13 Margarita Stathis. I live in Fremont. I've lived in the --  
14 born and raised in the Bay Area. I am married. And I have no  
15 children. I am a teacher -- third-grade teacher in Fremont for  
16 the last 23 years. My spouses' occupation -- he was a postal  
17 worker, and he retired because of stress. My educational  
18 background -- I have a B.A. in Liberal Studies, and a teaching  
19 credential. No military service. My hobbies and leisure -- I  
20 like to go shopping and read. Membership in organizations? I  
21 am a Greek Orthodox, and there's a lot of activities that we do  
22 with our church. My mother lives with us now. And I always  
23 take her to Greek family activities. Reading materials. *Time*  
24 magazine, and *Readers' Digest*. Television. My mom likes to  
25 watch lately at night. Not much. My husband likes to watch

1 CNN. My mom likes to watch something else. Whatever they're  
2 watching, I watch with them. But no bumper stickers. Type of  
3 Internet use. E-mail, and I just got on Facebook.

4 **THE COURT:** And if you actually could get a hold of  
5 that remote, what would you put on for yourself?

6 **PROSPECTIVE JUROR STATHIS:** Lifetime movie network.

7 **THE COURT:** Okay. Thank you.

8 Ms. Harris.

9 **PROSPECTIVE JUROR HARRIS:** Thank you. Angela Harris  
10 is my name. I live in --

11 **THE COURT:** Can you put the mic up even closer?  
12 There you go.

13 **PROSPECTIVE JUROR HARRIS:** Angela Harris is my name.  
14 I live in Marin. We've lived in the Bay Area for about 35  
15 years. And I'm from Canada; and from England before that. I  
16 have four daughters: 42, 40, 38, and 35. I'm a physical  
17 therapist -- or I was a physical therapist. And I've also been  
18 a book seller at Book Passage, in Marin County.

19 **THE COURT:** And how is Elaine Petrocelli?

20 **PROSPECTIVE JUROR HARRIS:** She is well, as far as I  
21 know.

22 **THE COURT:** Good.

23 **PROSPECTIVE JUROR HARRIS:** I'm no longer there, but  
24 as far as I know, she's still going strong. My husband's  
25 occupation -- he is a businessman. He works in real estate in

1 the city here. And then when he retired from that, he worked  
2 in Russia and in Poland and in Italy, which was very  
3 interesting.

4 **THE COURT:** Did you join him in any of those trips?

5 **PROSPECTIVE JUROR HARRIS:** I've visited Russia and  
6 Poland, and I lived with him in Italy.

7 **THE COURT:** I see.

8 **PROSPECTIVE JUROR HARRIS:** My educational background  
9 is physical therapy. I have a degree in physical therapy. I  
10 have no military service. My hobbies. I go to the gym. I  
11 read. I sew. And I'm a housewife. Membership in  
12 organizations. I belong to Marin Abused Women's Services, and  
13 Mothers Against Drunk Driving. Reading materials. *The*  
14 *Economist*, and *Bon Appetit*. PBS television is what we watch  
15 most of the time, news programs, documentaries. I like the  
16 mysteries. No bumper stickers. And e-mail is about the limit  
17 of my Internet use.

18 **THE COURT:** Okay. And what was the nature of your  
19 husband's employment?

20 **PROSPECTIVE JUROR HARRIS:** He was in real estate. He  
21 was in real estate in the city. And when he went to Russia and  
22 Poland, he did general business. He joined a friend who had  
23 been in the diplomatic service, and they tried to do business  
24 in Russia and Poland; but it was quite, quite difficult. And  
25 then in Italy, he joined a hotel company and worked with them a

1 while.

2           **THE COURT:** Okay. Thank you. And, being a Canadian,  
3 do you have some sympathy for the defendants who are from  
4 Canada, and are charged in this court?

5           **PROSPECTIVE JUROR HARRIS:** If -- you know, if they  
6 did something that was not honest, I have no feelings that they  
7 should get away with it.

8           **THE COURT:** You're not going to be too hard on them  
9 because they're Canadian -- just a because they're Canadian --  
10 right?

11           **PROSPECTIVE JUROR HARRIS:** I won't be too hard on  
12 them. No, no, no.

13           **THE COURT:** Yes. Ms. Gannaway. Sorry.

14           **PROSPECTIVE JUROR GANNAWAY:** That's okay.  
15 Rachael Gannaway. I live here in San Francisco. I am from  
16 Santa Cruz, so I've lived in pretty much the Bay Area my whole  
17 life. I'm married. No children. I manage a restaurant, which  
18 I've been doing for a very long time; probably ten years.

19           **THE COURT:** Where is that?

20           **PROSPECTIVE JUROR GANNAWAY:** Universal Café. It's in  
21 the Mission.

22           **THE COURT:** Mm-hm. Well, you might as well get a  
23 plug in, right?

24           **PROSPECTIVE JUROR GANNAWAY:** Yeah, right. My  
25 husband's a chef. My educational background is I got a

1 bachelors' in Creative Writing at Mills. And I'm now working  
2 on getting my masters' in Forensics. No military service.  
3 Hobbies and leisure. I run marathons. No memberships in  
4 anything. Reading materials. *Runners' World*. Television? We  
5 watch "Dexter," "X Files," things like that. No car. And  
6 Internet use -- mostly just research for school, and e-mail.  
7 Yada, yada.

8 **THE COURT:** And what do you plan to do with your  
9 degree in Forensics?

10 **PROSPECTIVE JUROR GANNAWAY:** I'm debating between  
11 being C.S.I., or getting more on the science end, like DNA and  
12 fingerprinting. So --

13 **THE COURT:** Now, does that -- does that indicate some  
14 interest in law enforcement?

15 **PROSPECTIVE JUROR GANNAWAY:** Yeah, I guess it does.  
16 Yeah.

17 **THE COURT:** Okay. Should the defendants worry about  
18 that; having you on the jury?

19 **PROSPECTIVE JUROR GANNAWAY:** Ha, ha. No, I don't  
20 think so. No.

21 **THE COURT:** Okay. Thank you. Mr. -- is it Bonacum?

22 **PROSPECTIVE JUROR BONACUM:** Yes. Mr. Bonacum.

23 **THE COURT:** Bonacum. Okay.

24 **PROSPECTIVE JUROR BONACUM:** Two Irish words put  
25 together. I live in Concord about 20 years now. I'm married.

1 No children. I work at PG&E as a senior I.T. product manager.  
2 I've been doing that about three years, but work worked at PG&E  
3 for 33 years. My wife works at Bank of America as a vice  
4 president, also in I.T. project management. I have a B.S. in  
5 Mechanical Engineering from Washington State University. No  
6 military service. I like backpacking, outdoor activities,  
7 photography. No membership in organizations. I like -- I like  
8 military history, so I have a subscription to *Military History*,  
9 and to *Naval History*; *Time* magazine; *Readers' Digest*. There  
10 are probably a couple of others. We just rotate them around.  
11 I read lots and lots of books, also.

12 **THE COURT:** What are you reading right now?

13 **PROSPECTIVE JUROR BONACUM:** A whole ton of books we  
14 got from my stepmom that just passed away. So it's -- again,  
15 they had a lot of military-type books, like Clive Cussler, and  
16 most of the other big authors in that.

17 **THE COURT:** Are you excited about the fact that this  
18 involves contracts with the military?

19 **PROSPECTIVE JUROR BONACUM:** No. That doesn't bother  
20 me at all. I mean, I don't know -- other than just what  
21 anybody could read about military-type things and stuff, I  
22 don't know, you know -- like, I like reading about mechanical  
23 things. So, yes, I like reading about tanks and things, but I  
24 don't really have any direct involvement with that.

25 **THE COURT:** Does it cause you to have some sympathy

1 for the Government in this case?

2           **PROSPECTIVE JUROR BONACUM:** No, no. I don't think  
3 so. I think I'd be very impartial.

4           **THE COURT:** Okay. And I think I interrupted you.  
5 I'm sorry.

6           **PROSPECTIVE JUROR BONACUM:** Oh, that's okay.  
7 Television. I don't watch much TV. I like "Survivor" and  
8 '49ers football. I like the Discovery Channel. That's about  
9 it. No bumper stickers. I don't believe in that. Internet  
10 use. I run a Web server of my photographs at home. And  
11 otherwise, I do just lots of Internet serving. I use the  
12 Internet a lot at work, so I'd say I'm a heavy Internet user.  
13 So I browse around a lot. I'm curious, so I go all over.

14           **THE COURT:** Well, let me ask you this. And this goes  
15 for all of jurors. I'm going to give you some instructions  
16 when you ultimately -- when we swear you in on that matter; and  
17 that is that you're not to do any independent research or  
18 investigation. You're not to Google or use any of the other  
19 search engines to look up things about the case or -- or any of  
20 the people involved, and that kind of thing.

21           You have to just decide the case based on what you  
22 hear in the courtroom, as a whole jury, so that no one is privy  
23 to any other information, or information you're bringing in  
24 from outside, as well as researching the law, and so forth. So  
25 are you going to be able to follow that instruction?

1           **PROSPECTIVE JUROR BONACUM:** Yes, I will. I'll  
2 restrict any activities like that. And I won't Tweet, and I  
3 won't Facebook about it.

4           **THE COURT:** You know the rest of the instruction. No  
5 Twittering, no Tweeting -- whatever is you do, and then any of  
6 those other social media.

7           Anybody would have a problem with that, and say, "Oh,  
8 I can't wait to get on my computer and tell everybody I'm  
9 sitting on this case"? And -- I hope you have more exciting  
10 lives than that.

11           Okay, but at any rate, whether you do or not, that's  
12 going to be the instruction that applies.

13           And why don't we go ahead and finish with the first  
14 row? And then we'll get back to our general questions. So we  
15 can go ahead with you, Mr. Lau, please.

16           **PROSPECTIVE JUROR LAU:** Yeah. My name is  
17 Stanley Lau. I lived in the Bay Area for almost 35 years. I'm  
18 married. Three children: 26, 23, 21. And my occupation is  
19 property management. Helping a family member do the  
20 investment. My wife is accounting. She works for Ericson  
21 Corporation. Ericson. E-r-i-c-s-o-n.

22           **THE COURT:** Sure. E-r-i-c-s-o-n. or -- s-s-o-n.

23           **PROSPECTIVE JUROR LAU:** Education. Junior college.  
24 Military? No, I don't have military background. And hobbies?  
25 Just walking. Membership? No. Reading? I don't do much

1 reading. Television. I like to watch some funny show;  
2 whatever the funny is, I do watch. Bumper stickers -- I don't  
3 have it. Type of Internet? Just Cable TV. Comcast cable.  
4 That's it.

5 **THE COURT:** Okay. Thank you very much.

6 Mr. Maffey, please.

7 **PROSPECTIVE JUROR MAFFEY:** Good morning. My name is  
8 Rex Maffey. And I live in American Canyon, which is in  
9 Napa County. I've lived in the Bay Area all of my life, which  
10 is 57 years. I am married. We don't have any children. My  
11 occupation is -- I'm a financial advisor. And I've been doing  
12 that for 15 years. My spouse's occupation is -- she's in wine  
13 sales with Cape Red Cellars, in Napa.

14 **THE COURT:** Good wine.

15 **PROSPECTIVE JUROR MAFFEY:** My educational background  
16 is high-school graduate, with roughly two years of college. No  
17 military service. Hobbies and leisure activities? I would say  
18 cooking, and I like to travel. No memberships in  
19 organizations. My reading materials? Subscriptions are  
20 *Investors Business Daily*, *The Wall Street Journal*, *Barron's*,  
21 and *Bon Appetit* magazine. Television programs? Bloomberg TV,  
22 Discovery Channel, History Channel, and C.S.I. No bumper  
23 stickers. Type of Internet use? Surfing the Internet, looking  
24 up news and financial. I use it for financial analysis with  
25 Yahoo! Finance, Emerson, money websites like that.

1           **THE COURT:** And are you self-employed, or are you  
2 employed by --

3           **PROSPECTIVE JUROR MAFFEY:** I'm employed by a CPA firm  
4 in Richmond, California.

5           **THE COURT:** Okay. Thank you very much.

6           **PROSPECTIVE JUROR DAVIDSON:** Yes. My name is  
7 Alberta Davidson, and I go by "Ally." I live in Sonoma County.  
8 I've lived in the Bay Area for 25 years. I'm divorced,  
9 thankfully. Number of children -- I have one beautiful  
10 18-year-old daughter who's in university right now. We do talk  
11 quite a bit with each other. We're very close. And she'd like  
12 to go into intellectual-property law, so I've done a bunch of  
13 research on that, so if you know of any good leads, let me  
14 know. My educational background -- I have -- I'm a licensed  
15 landscape architect in the State of California. It's a  
16 five-year degree. And no military service. Hobbies? I have a  
17 sewing studio. I love fabric, yarns, whatever. Membership in  
18 organizations? American Society of Landscape Architects,  
19 California Landscape Contractors' Association. Reading  
20 materials? Patrick.net. Real estate. *Threads* magazine.

21           **THE REPORTER:** I'm sorry, ma'am. Which magazine?

22           **PROSPECTIVE JUROR DAVIDSON:** *Threads*.

23           **THE REPORTER:** *Threads*. Thank you.

24           **PROSPECTIVE JUROR DAVIDSON:** And lots of library  
25 chips. I just read a book on counterfeiting. We haven't had

1 television for 25 years. No bumper stickers. I do have a box  
2 Volkswagen, a Beetle, though. And type of Internet use? I buy  
3 fabric online. I listen to Bloomberg. And I read the news a  
4 lot.

5 **THE COURT:** Okay. Now, you mentioned a magazine and.  
6 I still didn't understand. Was it *Drudge*?

7 **PROSPECTIVE JUROR DAVIDSON:** *Threads*.

8 **THE COURT:** *Threads*. Okay.

9 **PROSPECTIVE JUROR DAVIDSON:** Yeah. *Threads*.

10 **THE COURT:** It's a little bit different than *The*  
11 *Drudge Report*.

12 **PROSPECTIVE JUROR DAVIDSON:** Yeah. Some people would  
13 think sewing is drudgery, but no, it's not.

14 **THE COURT:** Now, before we pass it on and start with  
15 some of the individual questions.

16 I think we have everybody back -- so I have some more of  
17 the general questions I want to ask everyone.

18 **MS. HAMILTON:** Your Honor, I'm sorry. Mr. Ramos is  
19 actually gone.

20 **THE COURT:** Mr. Ramos left? Well, okay. How are we  
21 doing? Let's get a few more people and then we'll all take a  
22 break. How is that? So if we can go -- oh, Tony, can you  
23 bring it over here for Ms. Martine? We are creatures of habit  
24 here. So she is the next in order so to speak.

25 **PROSPECTIVE JUROR MARTINE:** My name is Judy Martine,

1 Judith. I live in Orinda. I have been in the Bay Area all my  
2 life, 69 years. I was born in San Francisco. I am married for  
3 the second time after having been widowed once. I have three  
4 children ages 42, four -- 41, 43 and 45.

5 My occupation was primarily housewife, and various  
6 part-time jobs and volunteer work. My last job was at a tennis  
7 club. My husband is a patent attorney, although he is pretty  
8 much retired now and volunteering in the San Francisco schools.  
9 And occupations of any children. Well, he has five children  
10 and I have three. His oldest son is a patent attorney, has his  
11 own firm in Sunnyvale. And the second is a rolfing -- teacher  
12 of rolfing. And the third is a daughter, a housewife. And  
13 another daughter is an airline attendant. And the last son is,  
14 works in Colorado, in the Denver area.

15 No military service.

16 Hobbies. I play tennis, golf, hike with my dog,  
17 cook, garden.

18 I belong to the S.F. museums, support public  
19 television, SPCA, and belong to local garden clubs and library  
20 groups. We subscribe to the *Economist* and *Cooking Light* right  
21 now. Various other materials that come and go.

22 Television. I mainly watch public television  
23 Discovery, History, some sports events. I did get very wrapped  
24 up in the Giants this year.

25 And no bumper stickers.

1 And internet use is email and research.

2 **THE COURT:** Hold onto that for just a minute. You  
3 say your husband is a retired patent attorney?

4 **PROSPECTIVE JUROR MARTINE:** Yes.

5 **THE COURT:** What firm was he with?

6 **PROSPECTIVE JUROR MARTINE:** He was with his son's  
7 firm.

8 **THE COURT:** What firm?

9 **PROSPECTIVE JUROR MARTINE:** His son's firm. I'm  
10 trying to think of the name. Martine Penilla.

11 **THE COURT:** I see, okay. And their offices are down  
12 on the peninsula?

13 **PROSPECTIVE JUROR MARTINE:** Sunnyvale. They do a lot  
14 of Silicon Valley.

15 **THE COURT:** And they did not do any criminal work at  
16 any time?

17 **PROSPECTIVE JUROR MARTINE:** No, intellectual  
18 properties, et cetera.

19 **THE COURT:** Thank you.

20 Mr. Wong?

21 **PROSPECTIVE JUROR WONG:** My name is Victor Wong. I  
22 live in Fremont. I'm between here, Modesto and Fresno. Pretty  
23 much been in the Bay Area all my life. I'm single. No  
24 children, that I know of.

25 I'm currently a business owner. Prior to that I was

1 an engineer for Applied Materials.

2 No spouse.

3 I have a B.S. in mechanical engineering. Since then  
4 I have gotten my M.B.A. and M.S.E.

5 No military service.

6 Hobbies, I like to play basketball. No membership  
7 in -- no memberships in any organizations.

8 Reading material would be various car magazines and  
9 *Fortune* magazine.

10 Television, limited to just sports.

11 No bumper stickers.

12 Internet use is just business and email.

13 **THE COURT:** And your current employment is?

14 **PROSPECTIVE JUROR WONG:** I'm self employed.

15 **THE COURT:** You're self employed. What do you do?

16 **PROSPECTIVE JUROR WONG:** I own a couple of yogurt and  
17 gelato chains called to Tutti Melon.

18 **THE COURT:** Very good. Thank you.

19 And Ms. Evans.

20 **PROSPECTIVE JUROR EVANS:** Yes. I'm Susanna Evans. I  
21 live in Concord. I have lived in the Bay Area for about 19  
22 years. I'm married. I have two children, twenty months and  
23 five months.

24 I am an insurance broker and have done that for four  
25 and a half years.

1 My spouse is a tile setter. My children don't work.

2 **THE COURT:** Your spouse is what?

3 **PROSPECTIVE JUROR EVANS:** Tile setter. Stone.

4 **THE COURT:** I see. Thank you.

5 **PROSPECTIVE JUROR EVANS:** My educational background,

6 I have a bachelor's in history and a minor in German.

7 No military service.

8 I have no hobbies. Raising children.

9 I am a member of the National Surety Association.

10 I have no time to read.

11 We have Modern Family on DVR, which I haven't seen in  
12 four months.

13 I have no bumper stickers, and I use the internet to  
14 spy on my cousins, who are 14 and 13, on FaceBook.

15 **THE COURT:** I see, okay. How are your investigatory  
16 skills?

17 **PROSPECTIVE JUROR EVANS:** They are getting very good.

18 **THE COURT:** Okay. Thank you.

19 Ms. -- is it --

20 **PROSPECTIVE JUROR WATSON:** Watson.

21 **THE COURT:** Watson, okay.

22 **PROSPECTIVE JUROR WATSON:** I'm Cindie Watson. I live  
23 in Livermore. I have lived there for 33 years, and been in the  
24 Bay Area obviously all that time. I'm married. I have two  
25 sons; one is 31 and one is 34. I had to think about that.

1           And I was -- I'm a retired teacher. I was a teacher  
2 for 27 years, just retired this last year. My husband is an  
3 architect, and my oldest son is a lawyer in New York. My  
4 younger son is an artist slash musician.

5           My educational background, I have a Bachelor's Degree  
6 in child development and a teaching credential.

7           No military service.

8           Hobbies. Cooking, running, reading, and trying to  
9 learn French.

10          Membership organizations. California Teachers  
11 Association and National California Teachers of Mathematics.

12          And I love to read. I read novels and non-fiction.  
13 I like to read about history. Subscribe to cooking magazines,  
14 the *San Francisco Chronicle*. I think that's really it.

15          Television. We watch the local news and Giants  
16 baseball. That's about it.

17          And bumper stickers, I have a Giants bumper sticker  
18 on my car. World Champion Giants, thank you.

19          And I, on the internet, just email and the Giants  
20 website. And, you know, just to Google certain things.

21          **THE COURT:** You have that bookmarked.

22          **PROSPECTIVE JUROR WATSON:** Yes, yes.

23          **THE COURT:** Now, the son who is in New York -- is it  
24 a son who is in New York that's a lawyer?

25          **PROSPECTIVE JUROR WATSON:** Yes. Yes, your Honor.

1           **THE COURT:** What is the nature of his legal work,  
2 practice?

3           **PROSPECTIVE JUROR WATSON:** He passed the bar I think  
4 now three years ago and he works for Legal Aid in the Bronx and  
5 works in housing law.

6           **THE COURT:** Tough job.

7           **PROSPECTIVE JUROR WATSON:** Yeah.

8           **THE COURT:** And has he ever done any criminal defense  
9 work or any criminal work of any kind?

10          **PROSPECTIVE JUROR WATSON:** No, no, your Honor.

11          **THE COURT:** Thank you.

12                   And Mr. Schwartzler, is that correct?

13          **PROSPECTIVE JUROR SCHWARTZLER:** That's correct.

14                   My name is Dan Schwartzler. I live in Clayton. I  
15 have resided in the Bay Area all my life.

16                   I'm not married. Don't have any children.

17                   Currently unemployed, by did work in sales and  
18 customer service.

19                   Educational background is, I have an Associate's  
20 degree and hoping to go back and get my Bachelor's.

21                   No military service.

22                   Hobbies and leisure. I like to travel, go out and  
23 sightsee. Go to the movies.

24                   I don't have any memberships.

25                   Reading materials. I like self-help kind of books,

1 things of that nature.

2 Television. I like informative stuff, so anything  
3 pretty much on Discovery channel, History channel. Things like  
4 Creation, like How and How, or something like that.

5 Bumper stickers. Don't have any.

6 Types of internet use. Just general information,  
7 email, social networking; things of that nature.

8 **THE COURT:** And what kind of sales work or what kind  
9 of companies were you working for when you were doing the sales  
10 and service?

11 **PROSPECTIVE JUROR SCHWARTZLER:** It was more or less  
12 in telecommunications.

13 **THE COURT:** Okay. Thank you.

14 Ms. Calderon, please?

15 **PROSPECTIVE JUROR CALDERON:** My name is Risa. I have  
16 been living in Santa Rosa for the past 22 years. I'm not  
17 married. I don't have any children.

18 I have been a medical receptionist for five years.

19 I have had some junior college.

20 No military service.

21 Hobbies and leisure activities is kind of just  
22 hanging out with the family, friends, scrapbook.

23 No memberships.

24 Reading materials. Kind of just the newspapers,  
25 *Press Democrat, Chronicle*. Sometimes I read *Time* magazine.

1           Television is SVU, Law and Order, lots of times; kind  
2 that type of stuff.

3           I don't have any bumper stickers, and usually use are  
4 the interpret for shopping or email use at work.

5           **THE COURT:** Okay. Thank you.

6           Ms. Whitney?

7           **PROSPECTIVE JUROR WHITNEY:** My name is Kelly, and I  
8 live in Concord. I have been in Concord or the Bay Area for  
9 the last past 33 years. I'm not married, but I do have a  
10 domestic partner. I have no children.

11           My occupation was -- I just real got laid off in  
12 October, but for six years I worked for Rosenbloom Cellars  
13 Winery in Alameda doing inside sales.

14           My educational background is I do have an Associate's  
15 in computer business. I plan to go back to get my Bachelor's  
16 in psychology.

17           No military service.

18           Hobbies and leisure activities. I like to go to the  
19 gym. I like to work out, take kickboxing classes. I like to  
20 read. I like to go on hikes. I like to cook.

21           Membership in organizations. Does 24-hour fitness?  
22 No. Okay.

23           Reading materials. Right now I'm currently reading a  
24 book called *Emotional Intelligence*.

25           Television. I like SVU. I like Criminal Minds, and

1 now that I'm off work the Young and the Restless.

2 Bumper stickers. I have an "Equality" bumper sticker  
3 and a bumper sticker that says "Meow."

4 Type of internet use is just social networking, email  
5 and the news.

6 **THE COURT:** And what was -- some criminally -- the  
7 crime-related type show you like to watch, what was that  
8 called?

9 **PROSPECTIVE JUROR WHITNEY:** Criminal Minds.

10 **THE COURT:** Oh, Criminal Minds.

11 **PROSPECTIVE JUROR WHITNEY:** Criminal Minds, yeah, and  
12 Law and Order SVU.

13 **THE COURT:** And that is a program?

14 **PROSPECTIVE JUROR WHITNEY:** What is that?

15 **THE COURT:** That is a program?

16 **PROSPECTIVE JUROR WHITNEY:** Yes.

17 **THE COURT:** And what's it about?

18 **PROSPECTIVE JUROR WHITNEY:** It's pretty scary  
19 actually. My girlfriend doesn't like to watch it. She leaves  
20 the room all the time because it's kind of bloody and gory, but  
21 it's just about a bunch of FBI agents who solve -- they solve  
22 the crimes. They do -- I can't think of the word.

23 **THE COURT:** Forensic?

24 **PROSPECTIVE JUROR WHITNEY:** They profile criminals.

25 **THE COURT:** I see. Okay.

1           So now is there -- you know, have you got that sort  
2 of mindset now so that that somehow gets transported into this  
3 case in some way?

4           **PROSPECTIVE JUROR WHITNEY:** It could, I don't know.  
5 I don't know. I'm pretty addicted.

6           **THE COURT:** I see. I see.

7           **PROSPECTIVE JUROR WHITNEY:** So I'm not sure, to be  
8 honest.

9           **THE COURT:** Well, would you just listen to the  
10 evidence in this case and not let any of that other stuff come  
11 into mind?

12           **PROSPECTIVE JUROR WHITNEY:** Absolutely. Sure, sure.

13           **THE COURT:** Yes.

14           **PROSPECTIVE JUROR DAVIDSON:** I failed to add that I  
15 worked 25 years for Sonoma County Water Agency, water  
16 conservation.

17           **THE COURT:** Now, I think you all have been very  
18 patient. Some of you have taken a break. So those of you who  
19 haven't, you should get the first dibs on the restrooms, I  
20 think, but -- before the people who have already left, but I'm  
21 going to allow all of you to take a break for about 10 minutes,  
22 probably about 15 by the time we get everybody back here, but  
23 say 10 minutes.

24           But before you bolt for the door here, there are some  
25 very important instructions you must follow and that is that

1 you are not to discuss anything about this case, anything  
2 related to it, the parties or the charges or anything else  
3 amongst yourselves or with anyone else or to the extent you  
4 could possibly form or express any opinion, form or express any  
5 opinion. So when you're talking to your fellow jurors, and  
6 certainly you should do that and get to know them, but talk  
7 about other things. Anything except this case, okay? And that  
8 instruction will follow through all the proceedings until we  
9 pick the jury, and then I will give you further instructions  
10 after we pick the jury.

11 So we'll take 10 minutes -- and, actually, will I get  
12 anything done in 10 minutes? No. Maybe you should take 15  
13 minutes. So if you want to go down to the second floor, get  
14 some coffee or anything like that, you can do that. But all  
15 come back here and resume your seats. Wherever you were,  
16 resume those seats in 15 minutes.

17 (Whereupon there was a recess in the proceedings  
18 from 11:34 a.m. until 11:53 a.m.)

19 **THE COURT:** Okay. Can you stand, please? Because  
20 it's going to be hard to hear everyone, even with the mic.

21 Okay. Thank you.

22 **PROSPECTIVE JUROR CANNON:** My name is Ellen Cannon,  
23 and I was born and raised in San Francisco. I have been living  
24 in Pacifica for the last 30 years. I'm single. I don't have  
25 any children.

1 I have been a registered nurse for over 40 years. I  
2 went to nursing school in Massachusetts. I have a diploma in  
3 nursing.

4 No military service.

5 Hobbies. Sewing, gardening.

6 Membership -- and reading.

7 Membership in organizations. Just the California  
8 Nursing Association.

9 I love to read. I read mainly mysteries.

10 And television, I watch HDTV and PBS. I like  
11 comedies and mysteries.

12 No bumper stickers.

13 And internet use for email and looking up how to do  
14 things, how to fix things or medical information.

15 **THE COURT:** Thank you very much, Ms. Cannon.

16 Mr. Black, please?

17 **PROSPECTIVE JUROR BLACK:** My name is Timothy Black.  
18 I live in San Leandro. I have lived in the Bay Area for 26  
19 years. I'm married. I have no children.

20 I'm a computer and network tech for Bloomberg, and I  
21 have been at that job for 12 years. My wife is a housewife.

22 My educational background is high school.

23 I served in the United States Navy for six years, and  
24 I was an E-5 when I got out.

25 Hobbies, golf.

1 No organizations.

2 What I read is usually non-fiction. No subscriptions  
3 to anything.

4 TV is mostly sports, maybe some comedies.

5 No bumper stickers.

6 Internet use would be reference, news; that's it.

7 **THE COURT:** And what kind of non-fiction do you like  
8 to read?

9 **PROSPECTIVE JUROR BLACK:** Maybe like history type  
10 stuff.

11 **THE COURT:** Okay. Thank you.

12 Mr. Costa?

13 **PROSPECTIVE JUROR COSTA:** Good afternoon. My name is  
14 Brian Costa. I currently live in Danville. I have been here  
15 for about 21 years and some change. I am not married. And I  
16 have no children.

17 I am currently a deli clerk and I'm also a student.

18 **THE COURT:** What are you studying?

19 **PROSPECTIVE JUROR COSTA:** I study mass communications  
20 at Cal State East Bay in Hayward.

21 I have not served in the military.

22 As far as hobbies go, I like to hike, mountain bike,  
23 anything outdoors. I like to paint. Golf and snowboard when I  
24 can afford it.

25 I'm not an active member in any organization.

1 I like reading anything satirical. I like  
2 non-fiction too, but fiction is fun.

3 As far as television, goes I like documentaries, kind  
4 of like faux TV.

5 I currently have a couple window decals that say "Old  
6 Soul."

7 And for the internet, usually research,  
8 entertainment. Actually, going back to reading materials, I  
9 use it for reading the news, and a little bit of gaming and  
10 social networking; that's about it.

11 **THE COURT:** Okay. Thank you.

12 Mr. Chaney, please.

13 **PROSPECTIVE JUROR CHANEY:** I'm Lionell Chaney. I  
14 live in Oakland. I lived in the Bay Area for 48 years.  
15 Single, no children.

16 My occupation is attorney services clerk.

17 No spouse.

18 High school.

19 No military services.

20 Hobbies. 10 and 13 go together.

21 **THE COURT:** I'm sorry, I missed that.

22 **PROSPECTIVE JUROR CHANEY:** 10 and 13 go together.  
23 I'm a TV junkie.

24 **THE COURT:** So somebody may understand that.

25 **PROSPECTIVE JUROR CHANEY:** I have a membership in the

1 National Notary Association.

2 **THE COURT:** What, national what?

3 **PROSPECTIVE JUROR CHANEY:** Notary Association.

4 **THE COURT:** Notary?

5 **PROSPECTIVE JUROR CHANEY:** Yeah.

6 **THE COURT:** I see, okay.

7 **PROSPECTIVE JUROR CHANEY:** Television. Like I said,  
8 I'm a TV junkie.

9 **THE COURT:** What do you like to watch most?

10 **PROSPECTIVE JUROR CHANEY:** Sci-fi.

11 **THE COURT:** I see, okay.

12 **PROSPECTIVE JUROR CHANEY:** Bumper stickers, none.  
13 Type of internet usage is email and Netflix.

14 **THE COURT:** And by whom are you employed?

15 **PROSPECTIVE JUROR CHANEY:** I'm employed by  
16 Fitzgerald, Albert and Beasley.

17 **THE COURT:** Fitzgerald, Albert and Beasley?

18 **PROSPECTIVE JUROR CHANEY:** Yes.

19 **THE COURT:** And you work solely for that company --  
20 or that law firm rather.

21 **PROSPECTIVE JUROR CHANEY:** Yes.

22 **THE COURT:** Okay. Thank you very much.

23 **PROSPECTIVE JUROR NOVICK:** Hi, my name is John --

24 **THE COURT:** Could you stand up for us Mr. Novick,  
25 please, and tell us about yourself?

1           **PROSPECTIVE JUROR NOVICK:** Yes, your Honor, I can.

2           Okay. My name is still John Novick. I live in Mill  
3 Valley, California. I lived in the Bay Area since '84. I am  
4 married to a girl I dated in high school. Took her 19 years to  
5 be convinced to marry me. We have four kids ranging from 17,  
6 14, 10 and 9.

7           I'm a retired Wall Street guy. My wife is a  
8 psychiatric nurse by profession, but she currently works as a  
9 school nurse.

10          I have a B.A. from Franklin Marshal College in  
11 Lancaster, Pennsylvania.

12          I have never been in the military.

13          I work out a lot, do everything, hike, run, go to the  
14 gym, do yoga, the works. I drive my kids around and go to all  
15 their games. And I serve on the board of the best inner city  
16 school in America, Oakland's Northern Lights School.

17          I'm a member -- let's see, organizations. NRA. I am  
18 a member of the Republican National Committee.

19          I like to read. I read mostly non-fiction.  
20 Subscribe to local newspapers, the *Wall Street Journal*, *Forbes*,  
21 *Sports Illustrated*.

22          Watch a lot of comedy on TV when I can. With four  
23 kids, you need the comedy.

24          I -- funny, I agree with the gentleman who said he  
25 doesn't believe in bumper stickers, but I have four. One is

1 the American flag. One is my NRA sticker. The next two always  
2 get a big chuckle in the Bay Area. I have one that has a --  
3 drawings of Jefferson, Washington and Ben Franklin and  
4 underneath it says "Right Wing Extremists." My next one says,  
5 "Please nobody tell Obama what comes after trillions."

6 Type of internet use. Email, reference, and keep an  
7 eye on my knucklehead head 14-year old FaceBook's entries, and  
8 I think that's it.

9 **THE COURT:** When you say you are a Wall Street guy,  
10 did you work for a firm?

11 **PROSPECTIVE JUROR NOVICK:** I worked on a trading  
12 desk, equity trader for a bunch of different firms and then  
13 traded my own account.

14 **THE COURT:** Okay. Thank you.

15 Mr. Chen, please.

16 **PROSPECTIVE JUROR CHEN:** Hi, my name is Yue Chen. I  
17 have been in the Bay Area for five years. Prior to that I was  
18 living in Massachusetts. The length of -- I'm married, and I  
19 have one nine year old.

20 My occupation is marketing director for Telecom in  
21 Cupertino, in the Bay Area. And my wife, she used to work at a  
22 similar industry as an engineer, but she is now a homemaker.

23 I have a Master's degree in double E, electrical  
24 engineering.

25 No military services, and I'm registered for

1 Selective Service years back.

2 Hobbies, I -- my own hobby nowadays is just my  
3 daughter, but prior to that I used to play tennis.

4 And membership, I -- through my employer affiliation,  
5 I'm a -- chair a marketing organization in answer stored, a  
6 broker firm.

7 And I read, primarily magazine-wise; *Time*, *Wall*  
8 *Street Journal*, and so on. And I like to read books that talks  
9 about minds and the potential of the human minds.

10 I don't watch TV much at all. No time for that.

11 No bumper stickers.

12 And internet use is very heavy both for work and for  
13 personal use. And I listen to NPR.

14 **THE COURT:** What kinds of things do you use the  
15 internet for personally?

16 **PROSPECTIVE JUROR CHEN:** Personally I use it to --  
17 for informational purposes and for shopping as well for work.  
18 Of course, email. I'm on email all the time, both for personal  
19 and for work. Don't do too much research until something  
20 breaks in my house. So that's another thing, and then that  
21 usually gets me to fix the problem very quickly.

22 **THE COURT:** Well, and you find that helpful?

23 **PROSPECTIVE JUROR CHEN:** Yes.

24 **THE COURT:** Good for you. Okay. Thank you.

25 Mr. Gillespie, please.

1           **PROSPECTIVE JUROR GILLESPIE:** Yes. John, John  
2 Gillespie. I have been in Mendocino County for about 14 years,  
3 and I moved to Santa Rosa about five years ago. I'm divorced.  
4 I have a 24-year old daughter. She is a therapist.

5           I am currently a bus driver for Santa Rosa City  
6 Transit. Before then my former wife and I had a physical  
7 therapy clinic for about 11 years in Mendocino County.

8           My education was at Santa Cruz, political science,  
9 anthropology, psychology. And I'm now taking training in  
10 Feldenkrais down in San Rafael.

11           No military service.

12           I'm a fair archer. I'm a ceramicist of some low  
13 reputé, and I belong to our local union.

14           I read voraciously. I take the *New Yorker*. Mostly  
15 non-fiction. I like history, that sort of thing.

16           I attend lectures at SSU and our local community  
17 college.

18           No television.

19           No bumper stickers.

20           And I use the internet for research.

21           **THE COURT:** What kinds of things do you like to  
22 research?

23           **PROSPECTIVE JUROR GILLESPIE:** Neolithic cave  
24 paintings, new world cave paintings. I go to some of the  
25 sites.

1           **THE COURT:** Thank you. Ms. Sermeneno.

2           **PROSPECTIVE JUROR SERMENO:** My name is Alicia  
3 Sermeneno. I live in San Ramon. I have been in the Bay Area 44  
4 years. I am single, no children.

5           I am a school teacher in Hayward. I teach first  
6 grade. This is my 22nd year in the classroom.

7           I have a B.A. in English from U.C. Davis, a teaching  
8 credential from Saint Mary's College.

9           No military service.

10          My hobbies are reading, ballet dancing, horseback  
11 reading, sailing and I play the piano.

12          I'm a member of the California Teachers Association.

13          I like to read novels and biographies. I subscribe  
14 to *Women's Day* and *Glamour*.

15          On TV I like to watch CNN, QVC, Oprah, All My  
16 Children and Glee.

17          I have no bumper stickers.

18          And I use the internet for email and online shopping  
19 information, Wikipedia.

20          **THE COURT:** Okay. Thank you very much.

21          Now, can you get that mic back to the next row and  
22 Ms. Thompson, please?

23          **PROSPECTIVE JUROR THOMPSON:** I'm Margo Thompson. I  
24 have only lived in the Bay Area four and a half years.

25          **THE COURT:** Where did you live before that?

1           **PROSPECTIVE JUROR THOMPSON:** Before that I was in  
2 Fresno.

3           I'm married. I have four children and two  
4 stepchildren. My children are ages 36, 35, 31 and 26. And my  
5 stepchildren are 31 and 33.

6           I was a school librarian in Fresno and then got my  
7 teaching credential and taught first grade. Oh, I have a  
8 Bachelor of Science. My husband is in informatics at Novartis  
9 in Emeryville.

10           No military service.

11           We like to hike and I like to walk and spend time  
12 with my grandchildren, which are mostly in Fresno.

13           Member of the LDS Church, and work in the women's  
14 organization and the children's organization.

15           I read mostly psychology self-help books and  
16 subscribe to *Oprah* and *Sunset*.

17           We watch PBS, news and college football.

18           And no bumper stickers, and use the internet for  
19 email.

20           **THE COURT:** Thank you.

21           Ms. Merritt, please?

22           **PROSPECTIVE JUROR MERRITT:** If my name is Deanna  
23 Merritt. I live in Antioch. I was born and raised in the Bay  
24 Area. I am single. I have two daughters, age 24 and 27.

25           I was a meat cutter for 15 years, but now I do

1 billing disputes for a major phone company.

2 I had a high school education with some technical  
3 training.

4 No military service.

5 My hobbies and leisure activities. I do -- I'm an  
6 avid reader, and I like to attend a lot of Native American  
7 activities.

8 I'm not a member of any organization.

9 I read mostly non-fiction, paranormal, Steven King.

10 Don't watch a whole lot of television, but I like  
11 American Pickers or Bones.

12 The only bumper sticker I have is a Native American  
13 medicine wheel.

14 And the internet use is just email and FaceBook.

15 **THE COURT:** And your daughters, if they are employed,  
16 what is the nature of their employment?

17 **PROSPECTIVE JUROR MERRITT:** They are not employed.

18 **THE COURT:** Okay, thank you.

19 Mr. Cardenas?

20 **PROSPECTIVE JUROR CARDENAS:** Yes. Hello. I'm Paul  
21 Cardenas. I live in San Ramon. I have been in the Bay Area  
22 about 17 years. I am married. I have three daughters, ages  
23 seven, four and two. My wife is a stay-at-home mom, so she  
24 takes the kids around.

25 I skipped over number six. My occupation, I'm the

1 director of finance and administration for the Department of  
2 Labor here in San Francisco, just a few blocks away. And I  
3 have been there about 10, 11 years.

4 **THE COURT:** Is this the U.S. Department of Labor or  
5 the state?

6 **PROSPECTIVE JUROR CARDENAS:** U.S. Department of  
7 Labor.

8 My educational background is I have a Master's degree  
9 in business from Saint Mary's college in Moraga.

10 No military service.

11 Hobbies and leisure. Generally, it's golf and hiking  
12 and taking my kids around to activities.

13 Memberships and organizations. I don't really have  
14 any.

15 Reading. *Golf Digest*, *Wall Street Journal*,  
16 *San Francisco Chronicle*.

17 Television. When I'm not watching kids shows with my  
18 children, it's generally something of a historical nature,  
19 History channel, Discovery channel.

20 No bumper stickers.

21 And internet use be email, general research for  
22 household things and stock quotes.

23 **THE COURT:** Thank you very much.

24 Ms. Kapoor-Acuna?

25 **PROSPECTIVE JUROR KAPOOR-ACUNA:** Hi. I'm Natasha

1 Kapoor-Acuna, currently living in Lafayette, California. Born  
2 in Canada, but lived in the Bay Area since I was 13. I'm  
3 married. I have three children, seven, five and four. Their  
4 job is to go to school.

5 My husband is a physician, Oakland Kaiser.

6 I did my M.B.A. and worked in a supply chain for some  
7 time.

8 No military service.

9 I like skiing, bike riding, gardening, composting,  
10 raising chickens.

11 In terms of organization, I now work in property  
12 management, so the AOA or Apartment Owners Association, those  
13 types of organizations.

14 I love to read fiction.

15 I play poker.

16 I watch Parenthood.

17 No bumper stickers.

18 I'm on the internet for everything; to shop, to  
19 research, to learn, to post ads on Craigslist, and on occasion  
20 to look into what other people are doing on FaceBook.

21 **THE COURT:** Okay. Thank you.

22 And, also, what do you do? You are in property  
23 management? What does that mean?

24 **PROSPECTIVE JUROR KAPOOR-ACUNA:** So we have  
25 apartments in the Oakland -- in Oakland and Berkeley that we

1 rent. So we rent them out.

2 **THE COURT:** And you take care of the management  
3 aspects of it?

4 **PROSPECTIVE JUROR KAPOOR-ACUNA:** That's right.

5 **THE COURT:** Thank you very much.

6 **PROSPECTIVE JUROR KAPOOR-ACUNA:** Sure.

7 **THE COURT:** Ms. Gibson?

8 **PROSPECTIVE JUROR GIBSON:** My name is Brenna Gibson.  
9 I live in San Francisco. I have been living in the Bay Area  
10 for four years. I am married. I don't have any children.

11 I just graduated from San Francisco State University  
12 with a Bachelor's in cell biology. And I'm currently taking  
13 classes at the community college and hoping to get into medical  
14 school in the fall.

15 My husband is an engineer.

16 I don't have any military service.

17 For hobbies, I do research with one of my professors  
18 at S.F.S.U. so that takes up a lot of time and outside of that,  
19 I play the piano. I like to cook. I like to travel.

20 I'm not a member of any organizations.

21 Reading material. I haven't been reading very much  
22 lately. I have a subscription to the *Atlantic*, and sometimes I  
23 like to read things like *Discover*, *Scientific American*, that  
24 sort of thing.

25 Television. I like old sitcoms like *Seinfeld*. I

1 like Curb Your Enthusiasm. I watch a lot of news, a lot of  
2 sports, because my husband watches that.

3 I don't have any bumper stickers.

4 And I use the internet for email and looking up  
5 recipes, that sort of thing.

6 **THE COURT:** And where are you hoping to go to medical  
7 school?

8 **PROSPECTIVE JUROR GIBSON:** Anywhere in California.

9 **THE COURT:** Good luck.

10 **PROSPECTIVE JUROR GIBSON:** Thank you.

11 **THE COURT:** And is it Butenko?

12 **PROSPECTIVE JUROR BUTENKO:** Yeah. Yes. My name is  
13 Vladimir Butenko. City of residence, I am living in Walnut  
14 Creek for last 14 years. I am married. I have two children, a  
15 daughter 23 years old and son is 25.

16 **THE COURT:** One is 23, and how old is the other?

17 **PROSPECTIVE JUROR BUTENKO:** My son 25 my daughter 23.

18 **THE COURT:** Are they employed? And if so, what is  
19 their employment?

20 **PROSPECTIVE JUROR BUTENKO:** Hmm?

21 **THE COURT:** Are they employed?

22 **PROSPECTIVE JUROR BUTENKO:** Yes. My son is working  
23 in San Francisco. He is a machine operator. And my daughter,  
24 she is in Wisconsin and she work in Wal-Mart store.

25 **THE COURT:** She working where?

1           **PROSPECTIVE JUROR BUTENKO:** In Wal-Mart store,  
2 Wal-Mart.

3           **THE COURT:** I see, I see. Thank you.

4           **PROSPECTIVE JUROR BUTENKO:** My spouse is self  
5 employed. She owns a home business. She is a seamstress in  
6 Walnut Creek.

7           I have a Master degree in engineering, mechanic --  
8 mechanical engineering.

9           No military service.

10          My hobbies. Sometimes I like to create something,  
11 some devices. I like to cook something.

12          No membership.

13          Reading material, just I check my mail, maybe some  
14 use.

15          Television. I like to watch History channel, and  
16 Animal Planet, Discovery channel and I like to watch news.

17          No bumper stickers. About three months ago I have  
18 one bumper sticker says "Mystery Spot," but I took it off.

19          **THE COURT:** Says what?

20          **PROSPECTIVE JUROR BUTENKO:** "Mystery Spot." Just one  
21 and I took it off.

22          Type of internet use. How I said, for email, for  
23 some use with my son because he is teaching me all the time.

24          **THE COURT:** And what is -- what is the nature of your  
25 employment? What do you do?

1           **PROSPECTIVE JUROR BUTENKO:** For now I am -- I receive  
2 unemployment benefits. I.

3           **THE COURT:** You what?

4           **PROSPECTIVE JUROR BUTENKO:** I'm looking for a job. I  
5 receive unemployment benefits.

6           **THE COURT:** You are looking for a job?

7           **PROSPECTIVE JUROR BUTENKO:** Yes.

8           **THE COURT:** What country -- in what country were you  
9 born?

10          **PROSPECTIVE JUROR BUTENKO:** What?

11          **THE COURT:** What country were you born in?

12          (Brief pause.)

13          **THE COURT:** Where were you born?

14          **PROSPECTIVE JUROR BUTENKO:** In Russia.

15          **THE COURT:** Russia, yes. And I sort of suspected  
16 that from your name. And you speak Russian, right?

17          **PROSPECTIVE JUROR BUTENKO:** Yes.

18          **THE COURT:** Well, I'm going to ask you a question,  
19 but I'm then going to ask everybody else this question as well.

20                 In this case there are going to be some conversations  
21 that were taped. There's going to be other testimony that may  
22 be in Russian, and I'm -- we're going to have that translated.  
23 There will be translations into English.

24                 So what I'm asking to ask everybody -- if there is  
25 anybody else who speaks Russian, you can raise your hand and

1 tell me that -- that, in fact, you're going to have to go by  
2 the official translation that we give you.

3 Now, would that be difficult for you? Because you  
4 might say to yourself, "Well, I don't think that's what it  
5 means," but if there is an official translation, we have to use  
6 that.

7 **PROSPECTIVE JUROR BUTENKO:** In Russian I can  
8 understand everything, but in English, I'm not sure. That's  
9 why.

10 **THE COURT:** And I couldn't quite understand that.

11 **PROSPECTIVE JUROR BUTENKO:** I'm not sure I can  
12 translate everything you will say.

13 **THE COURT:** In other words, but you're not to  
14 translate it for other people on the jury; you understand? You  
15 just have to understand it the way you understand it and use  
16 the official translation.

17 For the most part, the government and the defendants  
18 have agreed as to most of the translations. They have been  
19 officially translated and they agree that those translations  
20 are accurate. There may be a couple of places where there is a  
21 variance, is that correct?

22 **MS. HAMILTON:** Your Honor, I think that's been worked  
23 out.

24 **THE COURT:** And it's all been worked out. So they  
25 agree on the translations. So you cannot substitute your

1 knowledge of Russian for what they say it means. You  
2 understand that?

3 **PROSPECTIVE JUROR BUTENKO:** It's my pleasure.

4 **THE COURT:** Pardon?

5 **PROSPECTIVE JUROR BUTENKO:** It's my pleasure.

6 **THE COURT:** You can do that?

7 **PROSPECTIVE JUROR BUTENKO:** Yes.

8 **THE COURT:** Okay, thank you. And the attorneys may  
9 have some other questions of you. Thank you very much.

10 Does anybody -- is anybody else conversant in  
11 Russian? You can either read Russian or understand it?

12 (No response.)

13 **THE COURT:** Okay. And I think that's the only other  
14 language that's involved, is that correct, counsel?

15 **MR. HOWDEN:** That's right.

16 **THE COURT:** Okay. Thank you.

17 Now, where are we? Ms. Novitski?

18 **PROSPECTIVE JUROR NOVITSKI:** I'm Julie Novitski  
19 Godmintz. I reside in San Francisco. I'm born and raised  
20 here. I'm married and have a seven-year-old daughter.

21 I'm a first grade teacher. I have been teaching at  
22 my school for 22 years. My husband works for the San Francisco  
23 Police Department as a police service aid.

24 I have a Master's in educational administration.

25 No military service.

1 My hobbies are traveling and I dance hula.  
2 Membership in United Educators.  
3 Reading. Magazines like *Travel and Leisure* and *Wine*  
4 *Advocate*.

5 Television. Things like the Amazing Race, Grey's  
6 Anatomy, kind of shows like CSI.

7 No bumper stickers.

8 And internet mainly for email and just research.

9 **THE COURT:** Thank you.

10 Now, is your husband a sworn officer or is he a  
11 civilian employee?

12 **PROSPECTIVE JUROR NOVITSKI:** He is a civilian  
13 employee.

14 **THE COURT:** Okay. I'm getting worried about the  
15 first graders in the Bay Area, because it sounds like there's a  
16 lot of first grade teachers who are not in their classes.

17 Okay. Mr. Ramos, please.

18 **PROSPECTIVE JUROR RAMOS:** My name is Richard Ramos  
19 and I have lived in the Bay Area all my life, 54 years. I'm  
20 married. I have three children. Nicholas, 28, he is a manager  
21 at Best Buy in Emeryville. Kelly is 25, she is as financial  
22 aid advisor at Contra Costa college. Ricky is 22, and he is a  
23 student at U.C. Irvine.

24 I already talked about the fact that I was a retired  
25 police officer, Berkeley P.D. And I'm currently a professor at

1 Contra Costa College in San Pablo, and I teach criminal justice  
2 administration justice. My wife is a manager at AT&T.

3 Let's see. I have a Bachelor's in criminal justice and  
4 ethics studies from Cal State East Bay, a Master's in criminal  
5 justice administration from Sac State, and I'm in the middle of  
6 a doctorate program in educational leadership at San Francisco  
7 State.

8 No military service.

9 Oh, also I'm a music and -- music producer and recording  
10 artist for a record company in Europe.

11 **THE COURT:** And so what is your musical talent in?

12 **PROSPECTIVE JUROR RAMOS:** I play guitar, but I have a  
13 group that was popular, like, in the '70s, and 30 years later  
14 this record company found -- we did one 45 and it went to  
15 England and became a big hit and they didn't know how to get a  
16 hold of us, and 30 years later they found us.

17 **THE COURT:** Well, congratulations. Royalties late  
18 are better than no royalties at all, right?

19 **PROSPECTIVE JUROR RAMOS:** Yeah, right.

20 Let's see, golf, work out would be my leisure  
21 activities I guess.

22 I'm a member of the Rod and Gun Club in Richmond and  
23 the California Association of Administration of Justice  
24 Educators.

25 Reading materials lately have been a lot based on

1 education, the achievement gap and the success rates of  
2 students from community college toward four-year degrees, but I  
3 do have subscriptions to, like, the *Alameda County Legal*  
4 *Update*, which is pretty much a legal update from the level of a  
5 police officer, what they do on the street, stop and search and  
6 detentions, that sort of information. Also have a subscription  
7 to the *Peace Officer Research Association of California*, a  
8 magazine that comes out.

9           Television. I like a lot of, you know, the reality  
10 shows everybody likes, like *Survivor*.

11           Bumper stickers. I have got one. It says "No Bad  
12 Days" from Cabo San Lucas, which means don't have any bad days.  
13 Have good days, right?

14           And internet usage, I teach online. A lot of  
15 research online for this doctorate, and that's about it.

16           **THE COURT:** Thank you.

17           Could you hand the mic to the first woman in the back  
18 row, and we'll hear from her and then everybody in the back  
19 row?

20           Is it Ms. Kameoka?

21           **PROSPECTIVE JUROR KAMEOKA:** Yes. My name is Kathy  
22 Kameoka. I live up in Petaluma. I have lived there for 42  
23 years. I'm married. I have two children, 32 and 30. One  
24 works down in Tucson for Roche. She does biotech research.  
25 The other one is a high school counselor down in Los Angeles.

1 My husband is a mechanical engineer.

2 My education is an Associate Science in radiology.

3 No military service, but I did grow up as an Air  
4 Force brat.

5 Hobbies, I enjoy travel, photography and outdoor  
6 sports.

7 I belong to the National Professional Photography  
8 Association and the academy of -- American Academy of  
9 Radiology.

10 Reading materials. Subscriptions are photography and  
11 radiology, and I specialize in orthopedic and special  
12 procedures with myelograms and arthrograms and stuff.

13 Television. Kind of depends, a lot of travel. HDTV,  
14 All My Children and Oprah.

15 No bumper stickers.

16 And internet is mostly with FaceBook, to keep track  
17 of my kids and grandkids, email, and then just doing research  
18 for school work.

19 **THE COURT:** Thank you very much.

20 Ms. Yamamoto?

21 **PROSPECTIVE JUROR YAMAMOTO:** Good morning. My name  
22 is Sasha Yamamoto. I live in Castro Valley currently, and I  
23 have been in the Bay Area my entire life. I'm single. No  
24 children.

25 Currently doing customer service at an insurance

1 company. No spouse.

2 Working on my Bachelor's in psychology.

3 No military service.

4 Hobbies, incense and candle making.

5 No membership in organizations.

6 Reading material. I'm so busy with school right now,  
7 no time for extra reading.

8 Television. My favorite shows are House and NCIS.

9 No bumper stickers.

10 And internet use for school, media and social  
11 networking mostly.

12 **THE COURT:** And what are you studying?

13 **PROSPECTIVE JUROR YAMAMOTO:** Psychology.

14 **THE COURT:** And what's your ultimate goal?

15 **PROSPECTIVE JUROR YAMAMOTO:** I think child  
16 psychology. Because of my past, I think I would be a strong  
17 asset there.

18 **THE COURT:** Thank you very much.

19 Ms. Reed, please?

20 **PROSPECTIVE JUROR REED:** I am Christie Reed, and I  
21 live until Concord. I am a lifelong Bay Area resident. I am  
22 a -- have am domestic partner. We have no children.

23 I'm a self employed irrigation and landscape  
24 designer. My spouse is an occupational therapist specializing  
25 in neurology.

1 I have a Bachelor's in international economics and  
2 politics. I have ongoing training in horticulture and  
3 three-dimensional design, landscape design.

4 No military service.

5 Because I run my own company, my hobbies and leisure  
6 activity are actually just the chance to do nothing.

7 I'm a member with the Sierra Club.

8 My reading material is primarily landscape,  
9 horticulture, garden design.

10 Actually, I do have one hobby. I have been  
11 purchasing and remodeling houses in my neighborhood.

12 Television. Primarily Homes on Homes, Glee, every  
13 Giants game they play.

14 No bumper stickers.

15 A lot of internet use. No social networking, but  
16 primarily research design use.

17 **THE COURT:** Thank you.

18 Ms. Rosenthal?

19 **PROSPECTIVE JUROR ROSENTHAL:** My name is Danielle  
20 Rosenthal. I live in Foster City. I have been a resident in  
21 the Bay Area for 27 years. I'm a dual citizen, also a citizen  
22 of Israel. I'm single. I have one son, seven years old.

23 I'm a registered dental assistant and a clinical  
24 coordinator.

25 And I have some college and went to trade school.

1           Nothing in the military.

2           And my hobbies, coaching and playing soccer,  
3 snowboarding.

4           I'm a Lyon's member.

5           And my reading material. I like travel magazines. I  
6 subscribe to *Eretz, People* and a lot of reading of my son's  
7 homework.

8           I like watching House, Grey's Anatomy, lot of  
9 Nickelodeon and Discovery.

10          No bumper stickers.

11          And internet use is for email.

12          **THE COURT:** Okay. Thank you very much.

13          Mr. Miller, please.

14          **PROSPECTIVE JUROR MILLER:** Yes. My name is Bob  
15 Miller. I'm an Oakland resident for 33 years. I'm married.  
16 No children.

17          I have been working for Chevron for 33 years and it  
18 ends April 4th. I have been an IT manager. Right now I'm  
19 managing the DATA centers, or actually I'm transitioning that  
20 job. My spouse is -- she is a clinical microbiologist,  
21 virologist. She's lab director for Clinical Diagnostic Labs.  
22 Was in San Francisco city for -- through the 80's, but  
23 currently is working part time at several biotech companies.

24          I have a B.S. in mathematics.

25          No military service.

1 Hobbies and leisure activities are cooking, hiking,  
2 reading, theater and music.

3 Don't really have any specific memberships in  
4 organizations, except some associations professionally.

5 Reading materials tend to be fiction or management,  
6 management books. How we make decisions, how organizations  
7 work. Subscriptions are cooking magazines and professional  
8 magazines and *Newsweek* and *Scientific American*.

9 Television is movies, sports, the Daily Show and the  
10 Colbert Report.

11 Bumper stickers, none.

12 And internet usage is email, shopping and just  
13 general knowledge.

14 **THE COURT:** Okay. Thank you very much, Mr. Miller.  
15 Mr. Ramchandani?

16 **PROSPECTIVE JUROR RAMCHANDANI:** I am Rajeev  
17 Ramchandani. Live in Emeryville. Been in the Bay Area for  
18 about 15 and a half years. Married. No children, but one on  
19 the way.

20 Occupation is information systems and business  
21 process auditor. My wife's work is she is an HR specialist at  
22 a pharmaceutical company.

23 I have an M.B.A. I also am certified information  
24 systems auditor and pursuing a certified fraud examiner  
25 certification.

1 No military service.

2 Hobbies, leisure activity mostly leisurely travel,  
3 going to the movies.

4 Membership in professional organizations, Information  
5 Audit and Control Association and Association of Certified  
6 Fraud Examiners.

7 No regular reading material or subscriptions, but I  
8 an occasion read *Time*, *Economist*, *Business Week*.

9 Television. I mostly watch sitcoms, reruns or  
10 current shows.

11 No bumper stickers.

12 And heavy internet use, email, gaming use, research,  
13 shopping.

14 **THE COURT:** Now, tell me about this certified fraud  
15 investigators, whatever it's called. In what setting or  
16 context are you using those skills and talents?

17 **PROSPECTIVE JUROR RAMCHANDANI:** Primarily financial  
18 reporting.

19 **THE COURT:** Financial reporting?

20 **PROSPECTIVE JUROR RAMCHANDANI:** Yes.

21 **THE COURT:** And what kinds of things are you  
22 examining? Are you examining -- is it internal that you're  
23 looking at or are you looking at other companies?

24 **PROSPECTIVE JUROR RAMCHANDANI:** It's mostly other  
25 companies. I work for the Public Company Accounting Oversight

1 Board and we regulate the accounting firms that perform  
2 year-end financial statement audits for public companies.

3 **THE COURT:** Okay. Now, who is your actual employer  
4 then?

5 **PROSPECTIVE JUROR RAMCHANDANI:** It's PCAOB, Public  
6 Company Accounting Oversight Board.

7 **THE COURT:** I see, okay. And then do they contract  
8 with various accounting firms and auditing firms and so forth  
9 or --

10 **PROSPECTIVE JUROR RAMCHANDANI:** No. It's actually a  
11 regulatory agency. It's not government, but it's quasi  
12 government and it was formed with the *Sarbanes-Oxley Act* of  
13 2002.

14 **THE COURT:** I see, okay. Good old *Sarbanes-Oxley*.  
15 Now, what I want to know -- because, obviously, you  
16 have heard that this case involves allegations of wire fraud.  
17 You understand that?

18 **PROSPECTIVE JUROR RAMCHANDANI:** Yes.

19 **THE COURT:** Okay. Have you been involved in any  
20 cases where you have had to go to court and testify or have  
21 your deposition taken?

22 **PROSPECTIVE JUROR RAMCHANDANI:** No.

23 **THE COURT:** Does that kind of thing occur in your --  
24 you know, with other employees that you worked with?

25 **PROSPECTIVE JUROR RAMCHANDANI:** Not that I know of.

1           **THE COURT:** So how do your -- do you make findings  
2 and then make a report? What happens with the information have  
3 you gather?

4           **PROSPECTIVE JUROR RAMCHANDANI:** Our job is to really  
5 understand if there was fraud incurred in financial reporting  
6 at a publicly listed company in the U.S. And if there was, how  
7 did the engagement team of the firm that performed the audit of  
8 that corporation respond to those risks of fraudulent financial  
9 reporting.

10          **THE COURT:** I see. Okay. Now, what is charged here  
11 is something called wire fraud. We have federal statutes  
12 related to mail fraud and wire fraud. In those cases it has to  
13 do with what the party who is alleged to have engaged in the  
14 fraud intended and whether, you know, the statements or the  
15 admissions or whatever were material, but it is not necessary  
16 that the fraud, the purpose of the fraud be successful. In  
17 other words, you don't have to actually have gotten any money  
18 or been -- succeeded in doing whatever it is you were  
19 attempting to do. The question is whether or not there was an  
20 intent to deceive and so forth.

21               Is there anything about your experience that gives  
22 you some particular knowledge or expertise that might play into  
23 this?

24          **PROSPECTIVE JUROR RAMCHANDANI:** I have come across  
25 situations where fraud was uncovered at certain corporations

1 and I have been through, for example, the investigative work  
2 that went through by a forensics group to follow up on the  
3 allegations and the ultimate conclusions as it reports to  
4 financial reporting and the reliability of financial statements  
5 of that corporation.

6 **THE COURT:** Now, what's involved here is charges of  
7 the kind of fraud that constitutes criminal conduct. You know  
8 there's other kinds of fraud. Maybe they would give rise to a  
9 civil action or something like that. So you will get specific  
10 instructions as to what constitutes wire fraud.

11 Are you going to be able to just follow those  
12 instructions and put aside whatever you think may be fraud in  
13 your context? In other words, it's not just a question of  
14 ethics, it's a question of: Is this against the law?

15 **PROSPECTIVE JUROR RAMCHANDANI:** Yes, I believe so.

16 **THE COURT:** Okay. Any concerns at all that -- you  
17 know, that it would be difficult for you to be fair and  
18 impartial to both sides in this case -- or to all the parties I  
19 should say?

20 **PROSPECTIVE JUROR RAMCHANDANI:** Nothing that I could  
21 think of no.

22 **THE COURT:** Okay. Thank you very much.

23 Now, given what I have just -- before we go to our  
24 last juror, Ms. Dickinson, while we have those thoughts in mind  
25 about fraud and the fact that it doesn't have to be successful,

1 but you have to have all of the elements that are there -- and  
2 I will tell you what those are when I give you the jury  
3 instructions -- is there anyone who thinks, Well, if it didn't  
4 succeed then, you know, that shouldn't be criminal and I  
5 couldn't follow that instruction? Yes.

6 **PROSPECTIVE JUROR YAMAMOTO:** I didn't hear you. Can  
7 you repeat?

8 **THE COURT:** I'm sorry. Maybe I have the mic too far  
9 away. Can you hear me now?

10 **MS. YAMAMOTO:** Yes.

11 **THE COURT:** The question that I have is under our  
12 criminal law it is not necessary that the fraud that is being  
13 alleged be successful. In other words, the party being  
14 defrauded doesn't have to have lost money or whatever. It's a  
15 question of whether or not there was an intent to deceive and  
16 it was material and there are certain other factors.

17 So what I want to know is if you find that, in fact,  
18 well, nobody lost any money on this deal, even though the  
19 elements of fraud may be met under the instructions that I give  
20 you, would you be -- would it be difficult for you to return a  
21 verdict of guilty if, in fact, all of those elements were met  
22 even though the fraud wasn't successful?

23 Do you understand my question?

24 **MS. YAMAMOTO:** Yes.

25 **THE COURT:** Would that be difficult for you?

1           **MS. YAMAMOTO:** I don't believe so.

2           **THE COURT:** Pardon?

3           **MS. YAMAMOTO:** I don't believe so.

4           **THE COURT:** Okay. Anyone else?

5           (No response.)

6           **THE COURT:** And, obviously, again, you will get the  
7 instructions and they will be clearer.

8           Now, also, how -- how many of you have served on a  
9 jury before would you raise your hands? Okay. And I'm really  
10 only going to talk with these people right now over here.  
11 Thank you.

12           Okay. Of those of you who raised your hand, how many  
13 of you sat on a criminal case? Okay. And anything at all that  
14 happened in those cases that you found particularly  
15 disconcerting, and you thought: I could never sit on another  
16 jury? Do you think it would influence how you would think  
17 about this case? Any of you have any concerns about that?

18           And how many of you sat on civil cases? You got to  
19 sit on all kinds of cases? Is that it? Okay. Well, you know,  
20 you know the answer, then.

21           But understand that in a civil case, the burden of  
22 proof is different than in a criminal case. So if you sat on a  
23 civil case, you had to decide whether somebody was liable and  
24 had to pay money for some injury that somebody sustained, or  
25 something like that. And the burden of proof is different.

1 It's less. It's a preponderance of the evidence. So put that  
2 out of your mind.

3 In a criminal case, it's proof beyond a reasonable  
4 doubt. Can that -- anybody who sat on a civil case -- you --  
5 did you have any problem making distinction before?

6 **PROSPECTIVE JUROR MAFFEY:** None.

7 **THE COURT:** Anyone else?

8 Okay. And also, how many of you, other than what  
9 you've already told us, have family members or close personal  
10 friends or you, yourself, who have worked in the legal  
11 profession, either as a lawyer or as a legal secretary or a  
12 paralegal or whatever else? Gentleman who worked for  
13 attorneys' services here. Yes. Ms. -- where are we going  
14 here? Ms. Evans.

15 **PROSPECTIVE JUROR EVANS:** Yes.

16 **THE COURT:** Is that right?

17 **PROSPECTIVE JUROR EVANS:** Yes. My mother's an  
18 attorney.

19 **THE COURT:** Okay. What -- and where does she  
20 practice, and what kind of law does she practice?

21 **PROSPECTIVE JUROR EVANS:** She practices in  
22 California. And she is a consultant on title law, and oil and  
23 gas law, regarding title.

24 **THE COURT:** Okay. Has she ever done any kind of  
25 criminal work, either as a prosecutor or criminal defense

1 lawyer?

2 **PROSPECTIVE JUROR EVANS:** Not that I know about.

3 **THE COURT:** Okay. Thank you.

4 Anyone else whose family member, close personal  
5 friend, or you, yourself, have worked for a law firm?

6 **PROSPECTIVE JUROR MARTINE:** My husband was.

7 **THE COURT:** We talked about that. Right.

8 Anyone else, other than what we've already discussed?

9 **THE COURT:** Thank you. Yes, Mr. Miller. Hi, back  
10 there. You want to stand up and shout at us.

11 **PROSPECTIVE JUROR MILLER:** Yeah. Just a friend of  
12 mine that I went to high school with is a lawyer in L. A.

13 **THE COURT:** Do you talk with him about his work?

14 **PROSPECTIVE JUROR MILLER:** Some of it, yes.

15 **THE COURT:** Does he do any kind of prosecutorial  
16 work, or criminal defense work?

17 **PROSPECTIVE JUROR MILLER:** He does mostly corporate  
18 litigation.

19 **THE COURT:** I see, but does he do criminal defense  
20 work, then?

21 **PROSPECTIVE JUROR MILLER:** No.

22 **THE COURT:** Okay. Thank you.

23 Anyone else?

24 As you may have heard -- well, as I know you've  
25 heard, you've heard that these involve military-supply

1 contracts. Do any of you have any concerns about  
2 military-supply contracts with outside contractors? You say,  
3 "Why doesn't the military just do it, itself? Why are they  
4 contracting out"? And the fact that that may be involved --  
5 would that in any way affect how you listen to and decide the  
6 case? Anyone at all?

7 And also -- and you will hear testimony that the  
8 goggles that were involved in this case were being supplied to  
9 the armed forces, and particularly to the Iraqi armed forces.  
10 And so it involves, you know, obviously, you know, what was  
11 going on in Iraq, and the Iraqi armed forces themselves, as I  
12 understand it; not our own military forces.

13 Is that correct, Ms. Hamilton?

14 **MS. HAMILTON:** Yes, your Honor.

15 **THE COURT:** But is there anyone who has any strong  
16 feelings about the fact that Iraq is involved -- the Iraq war  
17 is tangentially involved -- that would make it very difficult;  
18 would make it difficult for you to be a juror in this case?

19 Any of you been very outspoken about the war, either  
20 pro or against?

21 Do any of you belong to any kind of advocacy groups  
22 that have been involved, either in pro- or anti-war issues; or  
23 with respect to criminal cases, with respect to arguing in  
24 favor of victims, or criminal defendants? Any of you involved  
25 in any of those kinds of organizations at all?

1 And again, does any -- do any of you have any  
2 feelings about the military, one way or the other, that would  
3 possibly affect how you would listen to and decide this case?  
4 Nobody at all? Everybody can be fair to both the Government,  
5 and to the defendants in this case?

6 Have any of you owned your own business?

7 Some of you have already told me that you owned your  
8 own business. Okay. Let me ask you this. For those of you  
9 who have owned your own business -- you, or a family member, or  
10 close personal friend -- did you ever feel you were cheated by  
11 other people at some point, on a contract or some kind of  
12 arrangement that you had? Did you ever feel that you were  
13 cheated by somebody else?

14 **PROSPECTIVE JUROR GILLESPIE:** Yes, indeed.

15 **THE COURT:** Who was that? John Gillespie.

16 **PROSPECTIVE JUROR GILLESPIE:** Insurance companies.

17 **THE COURT:** Okay. And that is in connection with --

18 **PROSPECTIVE JUROR GILLESPIE:** A --

19 **THE COURT:** -- an actual business that you have, or  
20 just your personal insurance?

21 **PROSPECTIVE JUROR GILLESPIE:** No. It was a  
22 physical-therapy practice that we owned. We deal with Blue  
23 Shield and Blue Cross.

24 **THE COURT:** I see. I see.

25 **PROSPECTIVE JUROR GILLESPIE:** Just a generalized.

1           **THE COURT:** And were there -- was there ever any  
2 lawsuit as a result of any of those --

3           **PROSPECTIVE JUROR GILLESPIE:** No.

4           **THE COURT:** -- incidents or situations?  
5 Did it have any significant impact on you?

6           **PROSPECTIVE JUROR GILLESPIE:** Financially, yes. Lost  
7 about 29 percent per year.

8           **THE COURT:** Now, how do you feel about sitting on a  
9 case where there are charges or allegations of fraud?

10          **PROSPECTIVE JUROR GILLESPIE:** Well, as a  
11 professional, we had to set that aside, and take it as business  
12 as usual.

13          **THE COURT:** Can you do that here?

14          **PROSPECTIVE JUROR GILLESPIE:** Absolutely.

15          **THE COURT:** Well, not treat it as business as usual;  
16 but can you put it aside, and say, well, that's not -- you  
17 know, this is just one set of facts that we're going to hear  
18 about, and it's confined to this set of facts, and not to any  
19 other experiences I've had in life?

20          **PROSPECTIVE JUROR GILLESPIE:** Absolutely.

21          **THE COURT:** Okay. Anyone else?

22          **PROSPECTIVE JUROR NOVICK:** Yes.

23          **THE COURT:** Yes, Mr. Novick.

24          **PROSPECTIVE JUROR NOVICK:** I'm part -- excuse me.  
25 I'm part of a class-action suit against a securities-fraud

1 case, but yeah, I think they were dishonest, but that would not  
2 affect me on how I feel about somebody else.

3 **THE COURT:** What is the status of that case?

4 **PROSPECTIVE JUROR NOVICK:** They're trying to settle  
5 right now. They're coming up with a final number. And then,  
6 obviously, they've got to weigh in all of the claims. And so I  
7 don't know how it will turn out as of yet.

8 **THE COURT:** Now, on which side of the equation are  
9 you? Are you a member of the class, or are you a defendant?

10 **PROSPECTIVE JUROR NOVICK:** I'm a member, suing the  
11 firm; suing the financial institution that engaged in fraud.

12 **THE COURT:** I see. I see.

13 And do you know if the SEC has brought any charges  
14 against the firm that you're suing?

15 **PROSPECTIVE JUROR NOVICK:** Yes, they have. They  
16 definitely have.

17 **THE COURT:** And are there any criminal charges  
18 pending against that firm?

19 **PROSPECTIVE JUROR NOVICK:** You know, I don't know.  
20 I'm just concerned if I'm going to get any money back. I pay  
21 attention to the nitty-gritty.

22 **THE COURT:** I see. Okay, but the -- so the SEC has  
23 its own enforcement proceeding, but that may be a civil  
24 proceeding, or it could be a criminal proceeding, but you don't  
25 know?

1           **PROSPECTIVE JUROR NOVICK:** I'm just waiting around  
2 for --

3           **THE COURT:** Again, when the word "fraud" jumps out at  
4 you do, you say "Aha"?

5           **PROSPECTIVE JUROR NOVICK:** It's a separate issue from  
6 my case.

7           **THE COURT:** Okay. And you're able to keep it that  
8 way?

9           **PROSPECTIVE JUROR NOVICK:** Yes, your Honor.

10          **THE COURT:** During the entire trial?

11          **PROSPECTIVE JUROR NOVICK:** I promise.

12          **THE COURT:** Okay. Now, does anybody have any problem  
13 with the fact that, hey, these are white-collar crimes, if  
14 they're crimes at all, and why is the Government spending its  
15 time prosecuting people like this, when we've got all of this  
16 violence around? Anybody have those -- any feelings about  
17 that? You feel: I'm just going to talk -- even if it sit on  
18 this case, I'm not going to give it, you know, much  
19 consideration, because it's not important? Anyone have those  
20 feelings? If so, you should tell us now; not later on.

21                 Okay. And are there some people who feel that fraud  
22 against the Government is just, you know -- it just happens,  
23 so, so what? It's not a significant problem?

24                 Or you think it is a significant problem, and this is  
25 your chance to get even, or something like that? Anyone has

1 any of those feelings?

2 And also, you understand that there will be witnesses  
3 testifying for the Government, and witnesses who may testify  
4 for the defendants. And the defendants may or may not testify.  
5 As I told you before, they don't have to. And they don't have  
6 to present any evidence, but you understand that you have to  
7 apply the same standards to all of the testimony, and not give  
8 anybody -- any testimony any less weight or less credibility  
9 assigned to it, just because they are on one side or the other?  
10 Anybody would have any difficulty following that instruction?

11 Counsel, I think you know I've probably beaten a dead  
12 horse. And so I think it's time to have some follow-up  
13 questions. Is there anything?

14 **MR. OSTERHOUDT:** One more juror.

15 **THE COURT:** Oh, yes. Ms. Dickinson. I'm sorry.  
16 We'll get to her, but -- and then after she has talked with us,  
17 is there -- are there any other questions you intended I ask?

18 I've consolidated a lot of them, if you can believe  
19 it. I know -- but I have consolidated a lot of the proposed  
20 questions.

21 **MR. HOWDEN:** I don't think so, your Honor.

22 **THE COURT:** Is it okay?

23 Ms. Dickinson, please tell us about yourself.

24 **PROSPECTIVE JUROR DICKINSON:** Rebecca Dickinson.

25 I've lived in San Leandro since 1982. Not married. No

1 children. I started nursing straight out of high school.  
2 Qualified as an R.N. in 1978. No military service. Hobbies?  
3 Reading, music, movies, theater. No membership in any  
4 organizations. I read a great deal, fiction and nonfiction.  
5 Television? BBC America, sports networks, reality shows. No  
6 bumper stickers. And I use the Internet for e-mail.

7 **THE COURT:** Okay. Thank you. And you have a  
8 wonderful accent.

9 **PROSPECTIVE JUROR DICKINSON:** I'm Welsh.

10 **THE COURT:** Wonderful. That accounts for watching  
11 BBC, I guess.

12 **PROSPECTIVE JUROR DICKINSON:** Yeah.

13 **THE COURT:** But we all love BBC, so -- okay. Thank  
14 you.

15 Ms. Hamilton, are you -- who's going to conduct --

16 **MS. HAMILTON:** I will, your Honor.

17 **THE COURT:** -- *voir dire* for the Government?

18 **MS. HAMILTON:** Thank you.

19 **THE COURT:** Each side -- excuse me. Each side has  
20 just a few minutes to ask you -- well, more than a few minutes,  
21 but not as long as I've spent, asking you a few questions, and  
22 following up with you.

23 **JURY VOIR DIRE**

24 **MS. HAMILTON:** First, I wanted to thank you for being  
25 here. I know it's by summons. You feel like you probably

1 don't have much of a choice, but the fact that you're here  
2 helps us determine justice, however that is that you make  
3 decisions that you make. So thank you for your time, however  
4 long you serve. Thank you.

5 What I'd like to do is -- as Judge Patel said, she  
6 covered a lot of territory. So what I'd like to do right now  
7 is just ask some follow-up questions of particular individuals.

8 First, Mr. Butenko.

9 **THE CLERK:** Ms. Hamilton, she's not going to be able  
10 to hear.

11 **THE COURT:** That's all right. Stay there, and hold  
12 the mic. Let her hold the mic. And then she can hand it to  
13 Mr. Butenko to answer.

14 **MS. HAMILTON:** So, Mr. Butenko, you -- when  
15 Judge Patel asked you about Russian, and speaking Russian, you  
16 said, "I can understand everything; but in English, I'm not so  
17 sure."

18 **PROSPECTIVE JUROR BUTENKO:** I am not so sure I can  
19 translate everything into English.

20 **MS. HAMILTON:** And when you say you're not so sure  
21 about translating everything into English, can you explain what  
22 you mean?

23 **PROSPECTIVE JUROR BUTENKO:** I have not enough words  
24 for everything.

25 **MS. HAMILTON:** Not enough words in English?

1           **PROSPECTIVE JUROR BUTENKO:**   Yes.

2           **MS. HAMILTON:**   Do you read books and magazines in  
3 English?

4           **PROSPECTIVE JUROR BUTENKO:**   Sometimes.

5           **MS. HAMILTON:**   And at home, what language do you  
6 speak?

7           **MR. BUTENKO:**   It depends.   If my son come with his  
8 friends, I like to speak English.   Mostly, Russian.

9           **MS. HAMILTON:**   When we -- most -- the evidence  
10 would -- I'm sorry.   The evidence will be presented in English,  
11 with individuals testifying in English.

12                   Do you believe that you'll -- how do you feel about  
13 listening to that?   Will you be able to listen to that  
14 testimony and understand it?

15           **PROSPECTIVE JUROR BUTENKO:**   I think I cannot say.

16           **MS. HAMILTON:**   I'm sorry?

17           **PROSPECTIVE JUROR BUTENKO:**   I cannot say.

18           **MS. HAMILTON:**   You cannot say?

19           **PROSPECTIVE JUROR BUTENKO:**   Experience.

20           **MS. HAMILTON:**   Would it be hard for you?

21           **PROSPECTIVE JUROR BUTENKO:**   Maybe.   Maybe not.

22           **MS. HAMILTON:**   One of the other parts that.

23           **PROSPECTIVE JUROR BUTENKO:**   Yes.

24           **MS. HAMILTON:**   I'm sorry?

25           **PROSPECTIVE JUROR BUTENKO:**   Most likely, yes.

1           **MS. HAMILTON:** Most likely, yes, it will be hard for  
2 you.

3           Judge Patel also talked about the fact that we'll be  
4 listening to recorded conversations in which Russian is the  
5 language that's spoken. Those translations or those  
6 conversations have been translated into English. Will you be  
7 able to put aside your understanding of Russian, and only look  
8 at the English translations, and not think about how you might,  
9 perhaps, have translated that language or those words  
10 differently?

11           **PROSPECTIVE JUROR BUTENKO:** Maybe.

12           **MS. HAMILTON:** Maybe. Is there a possibility that  
13 you might think about a better translation, in your own mind,  
14 than the one that you've been provided by the court?

15           **PROSPECTIVE JUROR BUTENKO:** Yes.

16           **MS. HAMILTON:** I'm sorry?

17           **THE REPORTER:** I'm sorry, Mr. Butenko. Can you speak  
18 up?

19           **THE COURT:** You're going to need to give him the mic.

20           **PROSPECTIVE JUROR BUTENKO:** Restate correctly what  
21 you asked me?

22           **MS. HAMILTON:** I'm sorry?

23           **PROSPECTIVE JUROR BUTENKO:** Can you repeat your  
24 question?

25           **MS. HAMILTON:** Sure. Will you be able to put aside

1 your understanding and knowledge of Russian, and take -- only  
2 look at the English translation that's been provided by the  
3 court?

4 **PROSPECTIVE JUROR BUTENKO:** I think, yes.

5 **MS. HAMILTON:** Or will you take your own life  
6 experiences and your own knowledge of Russian, and apply that,  
7 in order that there are better ways to translate a particular  
8 word or phrase than the way that the court has provided a  
9 translation?

10 **PROSPECTIVE JUROR BUTENKO:** Probably not.

11 **MS. HAMILTON:** That you would probably not what? I'm  
12 sorry. That you probably would not put your own translation  
13 into English?

14 **PROSPECTIVE JUROR BUTENKO:** Yes.

15 **MS. HAMILTON:** Thank you.

16 Mr. Ramos, I have a question for you.

17 **PROSPECTIVE JUROR RAMOS:** Yes.

18 **MS. HAMILTON:** You've had experience in white-collar  
19 crimes, is that right, and investigating them?

20 **PROSPECTIVE JUROR RAMOS:** Yes.

21 **MS. HAMILTON:** Have there been instances where an  
22 individual was wrongfully arrested?

23 **PROSPECTIVE JUROR RAMOS:** I try not to arrest if  
24 there's not a probable cause to arrest.

25 **MS. HAMILTON:** If -- it's a serious thing to convict

1 someone for crime. Is that right?

2 **PROSPECTIVE JUROR RAMOS:** Yes, it is.

3 **MS. HAMILTON:** And you believe in our system of  
4 criminal justice?

5 **PROSPECTIVE JUROR RAMOS:** Yes, I do.

6 **MS. HAMILTON:** So -- and in the concept of innocent  
7 until proven guilty?

8 **PROSPECTIVE JUROR RAMOS:** Yes, I do.

9 **MS. HAMILTON:** And you're committed to following the  
10 law?

11 **PROSPECTIVE JUROR RAMOS:** Yes, I am.

12 **MS. HAMILTON:** So will you follow the law in this  
13 case?

14 **PROSPECTIVE JUROR RAMOS:** Of course.

15 **MS. HAMILTON:** And you'll be able to deliberate with  
16 the jury, if you're chosen to sit, openly and honestly, in a  
17 way that pertains to the evidence you've heard in this case?

18 **PROSPECTIVE JUROR RAMOS:** Yes.

19 **MS. HAMILTON:** Thank you.

20 Ms. Martine, I don't think we were -- we obtained the  
21 employment of your children.

22 **PROSPECTIVE JUROR MARTINE:** Oh. My daughter, who's  
23 45 -- almost 46 -- is a V.P. with Bank of the West. And my  
24 older son is with Riva Software Company, in Wisconsin. And my  
25 youngest son is a chef, although not -- due to health reasons,

1 he hasn't been able to chef any longer, and he's legally  
2 growing marijuana in Washington.

3 **MS. HAMILTON:** Oh, okay.

4 Mr. Black, I just want to make sure there's no  
5 conflict. You work at Bloomberg. Is that right?

6 **PROSPECTIVE JUROR BLACK:** Yes.

7 **MS. HAMILTON:** Have you ever worked with or have you  
8 been aware of an individual named "Dave Ward"?

9 **MR. WARD:** (Indicating)

10 **PROSPECTIVE JUROR BLACK:** I'm sorry?

11 **MS. HAMILTON:** Do you recognize Dave Ward?

12 **PROSPECTIVE JUROR BLACK:** No.

13 **MS. HAMILTON:** Are you familiar with a woman named  
14 "Jillian Cohen"?

15 **PROSPECTIVE JUROR BLACK:** I know her name. I've  
16 never worked directly with her.

17 **MS. HAMILTON:** Okay.

18 Judge Patel, I've -- just kind of show of hands for  
19 this. Judge Patel talked about the fact that this case is  
20 about information being concealed from the Army. And what I'd  
21 like to do is back up a little bit.

22 This is -- the Army contract was one in which the  
23 Army was to supply night-vision goggles to the multinational  
24 forces in Iraq, who would then supply the Iraqi defense forces.  
25 That's kind of the context.

1 To say that -- does anyone have a situation or  
2 believe there's a situation where it would be permissible to  
3 withhold information in a business setting, whether it's  
4 regarding, you know, any contract with the military, or just in  
5 your own personal business setting, when you're negotiating a  
6 contract, or king representations, or talking; just that it  
7 would be -- that it would be permissible not to tell all of the  
8 information?

9 No hands.

10 **PROSPECTIVE JUROR MILLER:** I mean, yes. I mean,  
11 because you don't tell --

12 **THE COURT:** Can you stand, Mr. Miller, please?

13 **PROSPECTIVE JUROR MILLER:** Yes. When you're --

14 **THE COURT:** We can hear you pretty well without the  
15 mic.

16 **PROSPECTIVE JUROR MILLER:** When you're having a  
17 negotiation with someone, you don't tell them what your cost of  
18 goods were. You don't tell them what your manufacturing costs  
19 were. There are certain things that are not expected to be  
20 disclosed in those kinds of conversations.

21 **MS. HAMILTON:** And what about -- is there a  
22 determination, in your mind, about when a line -- about when  
23 things should be disclosed, and when things need not be  
24 disclosed?

25 **PROSPECTIVE JUROR MILLER:** Well, there are usually

1 rules about what the expectation is. And there's a discussion  
2 about that; at least, in the dealings that I've had on a  
3 contractual basis, but it's -- you know, it's like when you  
4 sell a how's. You're required to disclose everything that you  
5 know is relevant. Then that becomes something that you do, but  
6 you don't tell them how much it cost, necessarily -- how much  
7 it cost to build the addition on it.

8 **MS. HAMILTON:** And when you say there are rules  
9 there, are those general rules for a particular industry, or  
10 just generally?

11 **PROSPECTIVE JUROR MILLER:** Well, so, I guess  
12 there's -- that's hard to answer, because I think there are  
13 sort of some general ethics associated with it. There's -- you  
14 know, nondisclosure is something that doesn't even come up.  
15 That's different, in my mind, than nondisclosure as something  
16 that you let the other person assume that it's somewhat --  
17 right? I mean, there are differences from that perspective.

18 **MS. HAMILTON:** Okay. So in this -- in the case, if  
19 you hear the facts, and the argument is that there was no --  
20 that certain information was important, and wasn't disclosed,  
21 how -- are you able to look at either the defense's arguments  
22 or the prosecution's arguments impartially, to make a  
23 determination of that point?

24 **PROSPECTIVE JUROR MILLER:** I guess there are three  
25 things. There are the two agents, and then there's: What's

1 the basis for the transaction? What are the rules and the  
2 legal issues associated with the transaction?

3 And it seems to me those three things need to be  
4 taken into consideration.

5 **MS. HAMILTON:** Okay. Thank you.

6 **THE COURT:** I think Mr. Chen has his hand up.

7 **MS. HAMILTON:** I'm sorry, Mr. Chen. I apologize.

8 **PROSPECTIVE JUROR CHEN:** I have a similar something.  
9 I'm kind of struggling in my head. When you say that  
10 information was withheld -- there's so much information you're  
11 dealing with in this environment. So I'm trying to figure out,  
12 you know, when you say some information is withheld, whether  
13 that information was specifically asked for, or whether this  
14 information was obvious that it was relevant, and it was not  
15 provided; or is it a point where you -- you are making a  
16 conscious stipulation that you need to provide all this  
17 information, and there was no chance for the person who's  
18 providing the information to miss that information? Or is it  
19 something that's obvious?

20 I guess I would have to see the circumstances. If  
21 it's a formal case, I would say in my head, it seems to me it's  
22 hard to make a criminal -- a -- making a criminal case, where,  
23 if the information was just omitted not because of a very  
24 specific asking for it.

25 **MS. HAMILTON:** Thank you.

1           So Mr. Chen said it would be hard to envision a  
2 criminal case where there was information that was omitted.

3           Does anyone else feel or have ideas along those lines  
4 and that concept?

5           Would you -- were you raising -- you're nodding your  
6 head?

7           **PROSPECTIVE JUROR YAMAMOTO:** Oh. Me?

8           **THE COURT:** Ms. Yamamoto.

9           **PROSPECTIVE JUROR YAMAMOTO:** I was just kind of  
10 agreeing with what he said. If -- in the context the  
11 information was requested, and they chose not to answer the  
12 question or omit some information, then, yes, that's extremely  
13 dishonest; but if it wasn't asked for, or if they didn't know  
14 to disclose that information, then I don't see, you know,  
15 without -- how much they could be judged or said that they were  
16 being dishonest. If they didn't know to disclose it, then how  
17 could they be wrong for not putting it in the information?

18           **MS. HAMILTON:** So I'm sorry. Just make sure I heard  
19 you. So he if the individuals didn't know to disclose the  
20 information, then it wouldn't be fair to prosecute them?

21           **PROSPECTIVE JUROR YAMAMOTO:** Yes.

22           **MS. HAMILTON:** I'm sorry. Get the mic passed.

23           **PROSPECTIVE JUROR DAVIDSON:** Alberta Davidson. I am  
24 struggling with this, because -- struggling with this, because  
25 was there -- was there national risk or security involved? I

1 mean --

2 **MS. HAMILTON:** Would that be important to you?

3 **PROSPECTIVE JUROR DAVIDSON:** Could be.

4 **THE COURT:** I think, Ms. Hamilton -- I think the  
5 difficulty is that, you know, we're talking about this in a  
6 vacuum.

7 **MS. HAMILTON:** Right.

8 **THE COURT:** And you're going to be given  
9 instructions. And essentially the instructions will be that a  
10 scheme was devised to -- or participated in a scheme to  
11 essentially give -- either to give information, or omit -- and  
12 what we're talking about omissions that were material, first of  
13 all. So there were -- and we'll tell you a definition of what  
14 is material. And that is, it had a tendency to influence or  
15 was capable of influencing a person to make a decision in a  
16 certain way; and that there was an intent to defraud, or to  
17 deceive.

18 **PROSPECTIVE JUROR DAVIDSON:** Oh.

19 **THE COURT:** So does that complete the picture a  
20 little more?

21 **PROSPECTIVE JUROR DAVIDSON:** Mm-hm.

22 **THE COURT:** So we're not just talking about what is  
23 your ethical obligation, but also this is defining what the  
24 legal obligation is.

25 **PROSPECTIVE JUROR DAVIDSON:** Okay. So I think I

1 would need to put aside my ethical judgment of it, if --

2 **THE COURT:** If it differs with the instructions we  
3 give you.

4 **PROSPECTIVE JUROR DAVIDSON:** Exactly.

5 **THE COURT:** Okay. Can you do that?

6 **PROSPECTIVE JUROR DAVIDSON:** Yes.

7 **THE COURT:** Mr. Miller, can you do that?

8 **PROSPECTIVE JUROR MILLER:** Yes.

9 **THE COURT:** Mr. Chen?

10 **PROSPECTIVE JUROR CHEN:** Yes.

11 **THE COURT:** Did we get that clarified, Ms. Hamilton,  
12 so we can move on? I'll tell you what I'm aiming for here. I  
13 know you're tired. And I'm hungry, but they have questions to  
14 ask. And I want to get finished with this. Then we can decide  
15 who's going to be on the jury. And those who are not going to  
16 be on the jury can leave, and those who are going to be on the  
17 jury will stay only for couple more minutes, and then we'll let  
18 you go, and to come back tomorrow.

19 **MS. HAMILTON:** Thank you, your Honor.

20 **THE COURT:** Okay. So, moving right along.

21 **MS. HAMILTON:** Moving along, this case also, as  
22 you've heard, has recordings made that you will listen to.  
23 Those recordings were made by an individual coöperating with  
24 the FBI at the time. The defendants were not aware that those  
25 recordings were being made.

1 Does anyone -- just raise your hand -- have issues  
2 with that: The fact that, during the recordings, the  
3 defendants are not aware that their voices were being recorded?  
4 Does anyone think that might not be fair?

5 **PROSPECTIVE JUROR DAVIDSON:** Isn't that illegal?

6 **THE COURT:** Not if the Government does it.

7 **PROSPECTIVE JUROR DAVIDSON:** I mean, I --

8 **MS. HAMILTON:** Let me give you the mic.

9 **PROSPECTIVE JUROR DAVIDSON:** I didn't mean to be  
10 funny, but is that -- I don't know of much about the law, but I  
11 thought that you couldn't record someone without their  
12 knowledge. Is that still --

13 **THE COURT:** You're correct, but it's -- you know,  
14 that would have been an issue that would have been disposed of  
15 this whole case, if, in fact, that had occurred, and they  
16 hadn't had the authority to do it. So that's not an issue.

17 **PROSPECTIVE JUROR DAVIDSON:** I look forward to being  
18 educated about this.

19 **MS. HAMILTON:** Do you think --

20 **THE COURT:** If you did it, it would be a problem; or  
21 if I did it, it would be a problem.

22 **PROSPECTIVE JUROR DAVIDSON:** Okay.

23 **MS. HAMILTON:** Do you have issues with it being,  
24 perhaps, unfair to do that?

25 **PROSPECTIVE JUROR DAVIDSON:** No, I don't have any

1 definite stand, but I -- I try to follow the law. So, you  
2 know, I don't know, actually. I would have to look at it.

3 **MS. HAMILTON:** As you stand here today, what kind of  
4 feelings does this bring up in you?

5 **PROSPECTIVE JUROR DAVIDSON:** Well, the feelings that  
6 I'm thinking about is I work for a special district. We're a  
7 wholesale water supplier. We get sued a lot by individuals,  
8 groups, that think we are doing something illegal. From our  
9 point of view, that may or may not be true, but our charge, our  
10 mission, is to provide potable water. So I'm not quite sure.

11 **MS. HAMILTON:** Thank you. Pardon me.

12 Judge Patel made a point of talking about -- that the  
13 standard of proof here is beyond a reasonable doubt. As she  
14 said, it's not a hundred percent, but it's beyond a reasonable  
15 doubt.

16 In other words, taking your own common sense, and  
17 applying it to the evidence we hear.

18 Is there anyone here -- raising your hand -- who  
19 would be uncomfortable with that standard? Who needs more  
20 proof? I need a hundred percent? If I'm going to stand in  
21 judgment of another person, I want to be a hundred percent sure  
22 that that -- that that person did break the law, or didn't?  
23 Anybody?

24 And I think Judge Patel checked, but I just want to  
25 be extra clear. Is there anyone else who speaks Russian who's

1 sitting on the panel today?

2 Other languages, but not Russian?

3 All right. Thank you. Your Honor, I will pass the  
4 baton.

5 **THE COURT:** Who is proceeding first?

6 **MS. BOERSCH:** I think Will. Mr. Osterhoudt.

7 **MR. OSTERHOUDT:** Well, good afternoon. I'm not going  
8 to go on a long time, because you've been pretty thoroughly  
9 questioned, I think, by Judge Patel and by Ms. Hamilton. There  
10 are a couple of things, though, that were raised and not  
11 developed too much. And I just wanted to dispose of them.

12 We talked a little about omissions. You conceal or  
13 you don't say something. And some people expressed a view that  
14 that seems odd.

15 I think what you'll hear in this case -- and this  
16 isn't the time to do it detailed -- a lot about intent, and the  
17 concept that, to be guilty of a fraud, a person has to have  
18 criminal intent. That, here, means the intent -- it was based  
19 on concealment. It has to be something that should be  
20 concealed; that defendant knows it; and the defendant doesn't  
21 do it, on purpose, to keep it away from somebody. So we'll be  
22 talking about that element in our case.

23 Does everyone understand that? Comfortable with that  
24 concept? Our law has intent, and acts. They always have to  
25 both be there. And in this case, you will hear a lot about

1 that element.

2 Now, Mr. Ramos, I was a little concerned. And I  
3 appreciate particularly that you've been very open and candid  
4 with us here about your background, and what you do, and how  
5 you're feeling; but my understanding is you have -- you're a  
6 retired police officer, correct? You spend a lot of time  
7 believing that you acted properly as such, and you didn't  
8 arrest people unless there was probable cause, you said,  
9 correct, in your judgment? And since then, you've taught in a  
10 law enforcement field, right?

11 **PROSPECTIVE JUROR RAMOS:** Correct.

12 **MR. OSTERHOUDT:** And, as I understand, when you  
13 shared with us when Judge Patel was asking questions -- is it  
14 difficult for you to lay that background aside when you're in  
15 this case, listening to this evidence? I know you mean to do  
16 it, but is it maybe a little hard?

17 **PROSPECTIVE JUROR RAMOS:** It might be hard.

18 **MR. OSTERHOUDT:** I mean, do you think that perhaps in  
19 a case like this, and even -- I appreciate how fair -- we all  
20 want to be fair. We all bring with it our life experiences;  
21 everything we've ever done and learned, as experience. Would  
22 that be, maybe, a case that would better if you didn't sit on a  
23 particular criminal case like this?

24 **PROSPECTIVE JUROR RAMOS:** I'm not sure. It's going  
25 to be hard, because I think I'm probably going to be more

1 judgmental of how the investigation was handled than -- than,  
2 you know, what's really going on. So that's a good question.

3 **MR. OSTERHOUDT:** Well, let me put it this way.  
4 Sometimes we ask you this. Imagine, if you can, yourself in a  
5 place where Mr. Prilik was here, facing these serious charges,  
6 to be judged by this jury. Would you be comfortable with 12  
7 people in the box -- jury box -- who had your state of mind?

8 **PROSPECTIVE JUROR RAMOS:** Well, I think I would be --  
9 you'd challenge. I mean, if I was the attorney, I wouldn't  
10 have me on it.

11 **MR. OSTERHOUDT:** And that -- well, I didn't say that.

12 **PROSPECTIVE JUROR RAMOS:** I mean, I'm being honest  
13 with you.

14 **MR. OSTERHOUDT:** I appreciate it very, very much.  
15 These are difficult things. We all try to be honest as we can.  
16 We all do that. And I think that sometimes it's very hard.  
17 And maybe it's a little hard for you in this particular case,  
18 in view of your background.

19 **PROSPECTIVE JUROR RAMOS:** It's possible.

20 **MR. OSTERHOUDT:** Okay. Would you prefer not to sit,  
21 because of that feeling? You know how sure we have to be that  
22 people can be completely --

23 **PROSPECTIVE JUROR RAMOS:** I think I could be fair. I  
24 just think that the experience part of it -- it is going to be  
25 tough for me to put that aside --

1           **MR. OSTERHOUDT:** Yes, right.

2           **PROSPECTIVE JUROR RAMOS:** -- in looking at it, but  
3 that doesn't mean I can't be fair. I mean --

4           **MR. OSTERHOUDT:** Because you try to be?

5           **PROSPECTIVE JUROR RAMOS:** Yes, I would try to be.

6           **MR. OSTERHOUDT:** But you don't know if you can be, or  
7 not?

8           **PROSPECTIVE JUROR RAMOS:** I would not want them to  
9 get convicted if they didn't do anything.

10          **MR. OSTERHOUDT:** You don't know, though, whether you  
11 might -- whether you can really do that, or not? Is that a  
12 fair statement? You'd try, but you don't know?

13          **PROSPECTIVE JUROR RAMOS:** I would try. I don't know.

14          **MR. OSTERHOUDT:** Okay.

15          **THE COURT:** Well, you mentioned something about your  
16 being concerned you might second-guess the investigation?

17          **PROSPECTIVE JUROR RAMOS:** Not really second-guess.  
18 Just how well was it organized? Did they cover all of the  
19 basics?

20          **THE COURT:** Would that -- would that -- how would  
21 that cut? Would that cut against the Government, maybe, and  
22 say, "Look. They did a lousy job, you know"?

23          **PROSPECTIVE JUROR RAMOS:** I don't know. They might  
24 do a great job here.

25          **THE COURT:** Or you might say they did a lousy job.

1 And what would happen then?

2 **PROSPECTIVE JUROR RAMOS:** It's still going to be  
3 based upon what -- you know, the evidence that you present.

4 **THE COURT:** Okay.

5 **PROSPECTIVE JUROR RAMOS:** And it's -- you know, they  
6 could do a great job. And these two teams could do a terrible  
7 job. So it just depends on, you know, what comes out.

8 **THE COURT:** Okay.

9 **MR. OSTERHOUDT:** As long as you can be open,  
10 completely, and fair, that's all we can ask, you know. That  
11 you're satisfied with your ability to do that -- that's all  
12 that anybody can ask.

13 I had a question for Ms. Harris. You mentioned a  
14 couple of times to us the Defense Intelligence Agency. Your  
15 son-in-law, is it --

16 **PROSPECTIVE JUROR HARRIS:** My son-in-law.

17 **MR. OSTERHOUDT:** -- is there?

18 Now, you know, in this case, that agency is not  
19 involved, but we have an allegation of fraud; defrauding a  
20 government agency. Is that -- does that create any kind of  
21 doubt in your mind about your ability to judge it openly and  
22 fairly? Hard question.

23 **PROSPECTIVE JUROR HARRIS:** I don't think -- you know,  
24 I think I could judge on what I hear.

25 **MR. OSTERHOUDT:** We'll have contracting officers come

1 in, I think, from the agency, TACOM, which is involved in our  
2 case. And they'll be testifying. And their testimony may  
3 differ or diverge from that of defense witnesses in some ways,  
4 or from that of the people on trial. Would that be a problem  
5 for you, in view of that connection? Only you know that, so  
6 that's why I'm asking you that.

7 **PROSPECTIVE JUROR HARRIS:** It would depend on how I  
8 judge the witnesses; whether I felt they were being truthful.

9 **MR. OSTERHOUDT:** In other words, Judge Patel will  
10 give jury instructions about how you look at witnesses, in  
11 general, right?

12 **PROSPECTIVE JUROR HARRIS:** Right. I mean, it's a  
13 difficult thing for me to say, "Yes," you know; to say, "Yes, I  
14 would feel that way," or, "No, I wouldn't."

15 **MR. OSTERHOUDT:** I guess all I can ask is:  
16 Automatically, would you feel that way?

17 **PROSPECTIVE JUROR HARRIS:** Not automatically.

18 **MR. OSTERHOUDT:** Fine. You think you can judge a  
19 Government witness, an Army witness, or a person who works for  
20 the Army by just the same standards that the Court advises you  
21 to look at all witnesses?

22 **PROSPECTIVE JUROR HARRIS:** I hope so.

23 **MR. OSTERHOUDT:** Can you assure us that you can do  
24 that to the best of your ability?

25 **PROSPECTIVE JUROR HARRIS:** To the best of my ability.

1           **MR. OSTERHOUDT:** We're not trying to seek perfection  
2 here, but it's very important to both sides that everybody has  
3 a fair, level playing field here, because the stakes are very  
4 high. So I appreciate you being candid with us in that regard.

5           **THE COURT:** She just wants to know what her  
6 son-in-law is doing, right?

7           **PROSPECTIVE JUROR HARRIS:** That's true.

8           **MR. OSTERHOUDT:** He won't tell. He's keeping it  
9 quiet.

10           Mr. Maffey, you had some experience with a friend.  
11 Is it a friend that's a correctional officer at Atascadero?

12           **PROSPECTIVE JUROR MAFFEY:** Yes.

13           **MR. OSTERHOUDT:** You mentioned that to us in response  
14 to a general question; but is that -- is there anything about  
15 that that causes you to think you might view the evidence in  
16 this case differently than you would otherwise?

17           **PROSPECTIVE JUROR MAFFEY:** No, not at all.

18           **MR. OSTERHOUDT:** Do you talk do you talk to him about  
19 his responsibilities in caring for people or finding people?

20           **PROSPECTIVE JUROR MAFFEY:** Yes.

21           **MR. OSTERHOUDT:** And does that make you feel -- I'll  
22 just ask you. Does it create any doubt in your mind of your  
23 ability to fairly judge this case -- this evidence in this  
24 case?

25           **PROSPECTIVE JUROR MAFFEY:** No.

1           **MR. OSTERHOUDT:** Now, Mr. Schwartzler.

2           **PROSPECTIVE JUROR SCHWARTZLER:** Yeah.

3           **MR. OSTERHOUDT:** I appreciated your comments, because  
4 you were pretty candid with us. I think that you said that  
5 you -- you have your experience of police work, right?

6           **PROSPECTIVE JUROR SCHWARTZLER:** My cousin is.

7           **MR. OSTERHOUDT:** Your cousin. And are you,  
8 yourself -- you're -- you're a design -- you're in the design  
9 field. Is that right?

10          **PROSPECTIVE JUROR SCHWARTZLER:** No. Sales.

11          **MR. OSTERHOUDT:** Sales. Oh, okay. Sorry.  
12 Telecommunications?

13          **PROSPECTIVE JUROR SCHWARTZLER:** Correct.

14          **MR. OSTERHOUDT:** And you said, I think, if I've got  
15 it down right here, that it might cause you to side with the  
16 Government in some ways? I had that down. Could you elaborate  
17 on that a bit?

18          **PROSPECTIVE JUROR SCHWARTZLER:** It wasn't about  
19 telecommunications originally. It was something that  
20 Judge Patel had mentioned, in that she mentioned the example,  
21 "If there's smoke, that there's fire."

22          **MR. OSTERHOUDT:** That's it.

23          **PROSPECTIVE JUROR SCHWARTZLER:** Part of me -- my gut  
24 reaction to that is, yes, that's something that I tend to side  
25 with or believe in; but I would obviously, to the best of my

1 ability, look at what was presented, and make a decision on  
2 that.

3 **MR. OSTERHOUDT:** I see. Now, I think that we often  
4 do use that comment and analogy of, "Where there's smoke,  
5 there's fire." These gentlemen wouldn't be here if, you know,  
6 maybe there wasn't some something against them.

7 **PROSPECTIVE JUROR SCHWARTZLER:** Right.

8 **MR. OSTERHOUDT:** You know, is that what you kind of  
9 think?

10 **PROSPECTIVE JUROR SCHWARTZLER:** Like I said, that's  
11 kind of my gut reaction to this scenario, yes.

12 **MR. OSTERHOUDT:** And you heard Judge Patel tell the  
13 state of the law, which is that the indictment is just a way of  
14 getting us here. You know, there's no evidence of anything.

15 **PROSPECTIVE JUROR SCHWARTZLER:** Right.

16 **MR. OSTERHOUDT:** They're presumed to be innocent.  
17 The burden is on the Government throughout the case. They  
18 don't have any obligation to present anything.

19 **PROSPECTIVE JUROR SCHWARTZLER:** Right.

20 **MR. OSTERHOUDT:** Are you okay with those rules?

21 **PROSPECTIVE JUROR SCHWARTZLER:** Yes.

22 **MR. OSTERHOUDT:** I don't think you're unique in  
23 thinking what you told us; that, you know, maybe we're all here  
24 together for this serious proceeding; somebody must have  
25 thought there was a reason to do it.

1           **PROSPECTIVE JUROR SCHWARTZLER:** Right.

2           **MR. OSTERHOUDT:** Are you willing to accept the  
3 Judge's instruction that that's not the rule? The rule is that  
4 this charge means nothing at all?

5           **PROSPECTIVE JUROR SCHWARTZLER:** Yeah, I'm willing to  
6 accept the instructions given, and to try and follow those to  
7 the best of my ability, but part of me is still somewhat  
8 skeptical that my gut reaction might come into play. Yeah,  
9 it's a possibility.

10          **MR. OSTERHOUDT:** And what I want to know -- it's very  
11 important to know that you think you can overcome that gut  
12 reaction, because if you can't, there's nothing wrong with  
13 that, as long as we know about it.

14          **PROSPECTIVE JUROR SCHWARTZLER:** I still would tend to  
15 believe that we're all here for some reason, obviously. The  
16 point of it is to figure out whether they're guilty or not  
17 guilty. And I do believe that I would be able to overcome that  
18 feeling; that gut reaction.

19          **MR. OSTERHOUDT:** I think the Judge said what we're  
20 here for is to see if the Government can prove beyond a  
21 reasonable doubt. Is that okay with you?

22          **PROSPECTIVE JUROR SCHWARTZLER:** Yes.

23          **MR. OSTERHOUDT:** Thank you. I'm sorry to belabor the  
24 point. You can see where we have to be really careful.

25          **PROSPECTIVE JUROR SCHWARTZLER:** Sure.

1           **MR. OSTERHOUDT:** Thank you very much.

2           I think sometimes we -- we grab hold of a turn of  
3 phrase that somebody uses, which reminds me -- which might mean  
4 nothing at all. That's why we have to inquire about it.

5           I think, Ms. Thompson, the phrase I heard was -- was  
6 "I'm hoping I can be impartial." Is it a hope or a wish or a  
7 prediction?

8           **PROSPECTIVE JUROR THOMPSON:** No. I think that,  
9 hearing the facts, I'd be able to weigh them evenly.

10          **MR. OSTERHOUDT:** And you did have a friend, I think,  
11 that goes after fraudsters?

12          **PROSPECTIVE JUROR THOMPSON:** My son.

13          **MR. OSTERHOUDT:** Your son. That's a good friend.

14          **PROSPECTIVE JUROR THOMPSON:** My son's an attorney.

15          **MR. OSTERHOUDT:** He pursues fraud cases?

16          **PROSPECTIVE JUROR THOMPSON:** With insurance. He  
17 works for Triple A.

18          **MR. OSTERHOUDT:** He works for Triple A. Okay. And  
19 in our case, of course, the defendants are in business; a  
20 business up in Canada which supplies night-vision goggles, you  
21 know, for these different contracts. And they're accused of  
22 committing fraud against this Government agency, TACOM,  
23 because. The Government says they omitted to tell them about  
24 an arrangement they had that you'll hear about.

25          Now, anything in what you've heard when you spoke to

1 your son about his work that affects your judgment of that kind  
2 of case that I described?

3 **PROSPECTIVE JUROR THOMPSON:** I don't think so, no.  
4 This isn't with individuals who are trying to, you know, take  
5 advantage of the insurance.

6 **MR. OSTERHOUDT:** Right. People are trying to scam  
7 the insurance company.

8 And you understand that's not this kind of a case.

9 **PROSPECTIVE JUROR THOMPSON:** Exactly.

10 **MR. OSTERHOUDT:** And again, Mr. Beker and  
11 Mr. Prilik -- you know, they can be assured and comfortable in  
12 your fairness openmindedness when you listen to this case. Is  
13 that right?

14 **THE COURT:** We need to have a verbal answer for the  
15 record.

16 **PROSPECTIVE JUROR THOMPSON:** Yes.

17 **THE COURT:** What was it?

18 **PROSPECTIVE JUROR THOMPSON:** Yes.

19 **THE COURT:** Okay. Thank you.

20 **MR. OSTERHOUDT:** I wanted to just ask a couple of  
21 questions of Ms. Novitski.

22 Ms. Novitski, your husband -- he's with San Francisco  
23 Police Department, but he's not an officer, right?

24 **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** Right; not  
25 sworn.

1           **MR. OSTERHOUDT:** Pardon me?

2           **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** Nonsworn.

3           **MR. OSTERHOUDT:** Does that -- can you say you do  
4 identify with law enforcement more than you do with other  
5 people that might be testifying or in trial?

6           **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** I guess maybe  
7 think about it might, having worked for the Police Department,  
8 just in their training facility; but I can't -- I don't think I  
9 really --

10          **MR. OSTERHOUDT:** What did you do for their training  
11 facility?

12          **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** I helped  
13 trained the police-officer recruits.

14          **MR. OSTERHOUDT:** Pardon?

15          **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** I was a role  
16 player for the training of the police-officer recruits.

17          **MR. OSTERHOUDT:** As a role player?

18          **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** Mm-hm.

19          **MR. OSTERHOUDT:** What kind of roles did you play?

20          **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** Scenarios of  
21 domestic violence, child abuse.

22          **MR. OSTERHOUDT:** Our case is a world away from that  
23 kind of situation. You understand that?

24          **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** Yes.

25          **MR. OSTERHOUDT:** How about our case? Can you fairly

1 judge it?

2 **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** I believe so.

3 **MR. OSTERHOUDT:** Nothing in your experience causes  
4 you to have any doubt about that, that you would share?

5 **PROSPECTIVE JUROR NOVITSKI GODMINTZ:** No.

6 **MR. OSTERHOUDT:** That's the final thing I wanted to  
7 say before I hand this over, is that -- is that all we're  
8 asking for is your best assessment, your honest assessment,  
9 reassuring all parties of your impartiality. No one wants any  
10 side's favored, but as long as -- I appreciate you've all told  
11 us that you can do this, and we take you at your word, and  
12 appreciate it. And thank you.

13 **THE COURT:** I gather you're going to be doing the  
14 remaining questions, Ms. Boersch?

15 **MS. BOERSCH:** I'll be quick, because I know  
16 everyone's getting very tired of sitting here.

17 And I just echo what Mr. Osterhoudt just said, and  
18 thank you all for your forthrightness. It is really, really,  
19 important that we understand everybody's views on things, so  
20 that we can assure that both sides get a fair trial, because  
21 that's what this system is based on. It's very important.

22 Can I get a show of hands of the number of you?  
23 Several of you had either been a witness in a criminal case, or  
24 testified in a criminal case before. Could I get a show of  
25 hands again of those of you who had?

1           So I have a general question for those of you who  
2 have. Was there anything about the process that might hinder  
3 your ability to be fair here in this criminal trial?

4           In other words, do you have the view, having  
5 participated in this process from one side, that the guy who --  
6 or girl -- whoever -- they were guilty in my case, and so I  
7 assume that's the case in most criminal cases? Is there  
8 anything about your involvement in the process that would lead  
9 you to have a bias, one way or the other, in a criminal case?

10           **PROSPECTIVE JUROR CALDERON:** No. Risa Calderon.

11           **MS. BOERSCH:** Okay. You think you could be fair,  
12 although you've had experience in a criminal case which was a  
13 very different criminal case than this one?

14           **PROSPECTIVE JUROR CALDERON:** Yes.

15           **MS. BOERSCH:** Has anyone here ever traveled to the  
16 former Soviet Union?

17           Ms. Harris, you have you mentioned that.

18           And I'm sorry. You were in the former --

19           **PROSPECTIVE JUROR KAMEOKA:** I've just been over to  
20 Russia on a tour.

21           **MS. BOERSCH:** Where did you go?

22           **PROSPECTIVE JUROR KAMEOKA:** St. Petersburg.

23           **MS. BOERSCH:** St. Petersburg. Did you enjoy it?

24           **PROSPECTIVE JUROR KAMEOKA:** Yes. It was beautiful.

25           **MS. BOERSCH:** And someone else back there has been?

1           **PROSPECTIVE JUROR DICKINSON:** Leningrad.

2           **MS. BOERSCH:** When was that, that you were there?

3           **PROSPECTIVE JUROR DICKINSON:** Few years ago. Ten  
4 years ago.

5           **MS. BOERSCH:** Did you enjoy it?

6           **PROSPECTIVE JUROR DICKINSON:** Yes.

7           **MS. BOERSCH:** Either of you have any negative  
8 experiences that you think might affect your ability to be fair  
9 in this case to these defendants?

10          **PROSPECTIVE JUROR DICKINSON:** No.

11          **MS. BOERSCH:** Ms. Harris, anything in your  
12 experience?

13          **PROSPECTIVE JUROR HARRIS:** My husband did not have a  
14 good business experience.

15          **MS. BOERSCH:** And do you think you might have a hard  
16 time setting that aside, if you were to sit on a jury in this  
17 case with these defendants?

18          **PROSPECTIVE JUROR HARRIS:** I would try.

19          **MS. BOERSCH:** I appreciate that. Do you have some  
20 doubts, though, that you might not be able to? We -- it would  
21 be understandable, but we just need your honest opinion about  
22 it.

23          **PROSPECTIVE JUROR HARRIS:** Maybe if I saw a  
24 similarity with one of the characters to one of the characters  
25 that my husband dealt with, that didn't go -- it would be

1 difficult.

2           **MS. BOERSCH:** So you might have some difficulty  
3 setting aside your own personal experience, in order to judge  
4 the evidence in this case?

5           **PROSPECTIVE JUROR HARRIS:** It's possible.

6           **MS. BOERSCH:** I think you also mentioned that you --  
7 because of the work of your son-in-law, you might have a  
8 tendency to favor the Defense Department? Is that correct?

9           **PROSPECTIVE JUROR HARRIS:** I don't remember saying  
10 that.

11           **MS. BOERSCH:** Or a tendency to believe the Defense  
12 Department? I might have you -- I might have it wrong. You  
13 don't think you would have a tendency to?

14           **PROSPECTIVE JUROR HARRIS:** I would like to think I  
15 could be, you know -- have a sort of well-balanced view.

16           **MS. BOERSCH:** And do you feel confident that you  
17 would be able to, particularly given your husband's experience?

18           **PROSPECTIVE JUROR HARRIS:** It could be difficult.

19           **MS. BOERSCH:** Okay.

20           Mr. Miller, I think did you mention that your wife  
21 worked for a clinical laboratory.

22           **PROSPECTIVE JUROR MILLER:** Clinical diagnostic  
23 laboratory director.

24           **MS. BOERSCH:** For which clinical lab?

25           **PROSPECTIVE JUROR MILLER:** Right now? It was years

1 ago. San Francisco Health Department; but recently, she's been  
2 doing a couple of small labs biotechnology. One of them is  
3 XDx, which does heart-rejection blood tests for transplant  
4 patients.

5 And then the other one is a company that does  
6 prediagnostic testing for diabetes.

7 **MS. BOERSCH:** No DNA or any testing related to the  
8 criminal testing system?

9 **PROSPECTIVE JUROR MILLER:** No, nothing related to  
10 criminal tests.

11 **MS. BOERSCH:** Okay. Thank you.

12 Ms. Reed, you were acquainted with Ms. Hamilton, as I  
13 understand, from years ago. Do you think you would be able to  
14 fairly judge my client and Mr. Osterhoudt's client in this  
15 case, despite your acquaintance with Ms. Hamilton?

16 **PROSPECTIVE JUROR REED:** Certainly.

17 **MS. BOERSCH:** You think you'd be able to set aside  
18 feelings, one way or the other, you may have had about  
19 Ms. Hamilton in the past?

20 **PROSPECTIVE JUROR REED:** Yes.

21 **MS. BOERSCH:** If I could have just one sec.

22 (Discussion off the record)

23 I don't have any other questions. Thank you all  
24 again very much for your patience, and for being very  
25 forthright with us. We appreciate it. Thanks.

1           **THE COURT:** You can give it to Mr. Bowser?

2           Ms. Harris, you said it might be difficult.

3           The question is: Can you assure, even if it is  
4 difficult, that you can set aside any of this other information  
5 that's coming -- you know, that's come to you from outside this  
6 case, put that aside, and satisfy the defendants in this case  
7 and the Government in this case that they will each get a fair  
8 trial from you?

9           **PROSPECTIVE JUROR HARRIS:** Yes, I think so.

10          **THE COURT:** And you say you think so. Can you assure  
11 them?

12          **PROSPECTIVE JUROR HARRIS:** I would certainly like to  
13 think that I could, and -- but it's very difficult to be  
14 certain.

15          **THE COURT:** Okay. What kind of thing might -- might  
16 trigger your being -- you know, you're going from "I'm going to  
17 be fair" to, "Oh, my God." You know? You know what I'm  
18 talking about?

19          **PROSPECTIVE JUROR HARRIS:** Yes.

20          My husband had a very bad business experience.

21          **THE COURT:** And where was it? In what part of Russia  
22 was it?

23          **PROSPECTIVE JUROR HARRIS:** That was in Moscow.

24          **THE COURT:** Was this when it was still in the Soviet  
25 Union?

1           **PROSPECTIVE JUROR HARRIS:** Yes. Yes.

2           **THE COURT:** You understand that there are a lot of  
3 people who are Russian here. And they're not all the same,  
4 right?

5           **PROSPECTIVE JUROR HARRIS:** I know. And some of them  
6 are delightful. Many of them are delightful, but --

7           **THE COURT:** Do you have any preconception about these  
8 individuals who are here? I mean, they left Russia, right; or  
9 left Moldova?

10           **PROSPECTIVE JUROR HARRIS:** I don't have any  
11 preconception, no. I'm sure they're delightful people. And --

12           **THE COURT:** And even if they're not delightful, the  
13 question is: They're presumed to be innocent, right?

14           **PROSPECTIVE JUROR HARRIS:** Right.

15           **THE COURT:** And --

16           **PROSPECTIVE JUROR HARRIS:** And honest.

17           **THE COURT:** Can you give them that presumption, and  
18 then hold the Government to the burden of proving the charges  
19 by proof beyond a reasonable doubt?

20           **PROSPECTIVE JUROR HARRIS:** I think so.

21           **THE COURT:** Well, if --

22           **PROSPECTIVE JUROR HARRIS:** I can't do better than "I  
23 think so." I'm sorry.

24           **THE COURT:** And the question is: is that good  
25 enough?

1           If you were seated at -- you know, in the place of  
2 one of the defendants in the case, or their attorney, would you  
3 be satisfied? I mean, we just asked the defendants -- the  
4 defendants in this case -- would you be satisfied having you on  
5 the jury, any more than anybody else? I mean, any reason why  
6 you couldn't be as fair as anybody else on the jury?

7           **PROSPECTIVE JUROR HARRIS:** Because that's a sort of  
8 negative feeling I have, I probably would not be happy having  
9 me on the jury, no. That's -- I would -- I would really try to  
10 be fair, and judge as it was; but I would find it very  
11 difficult to put all of these -- because it was very bad  
12 experience. And --

13           **THE COURT:** Okay. Counsel, is there a stipulation,  
14 or --

15           **MR. HOWDEN:** Yes, your Honor.

16           **MR. OSTERHOUDT:** Yes, your Honor.

17           **MS. BOERSCH:** Yes.

18           **THE COURT:** Ms. Hamilton?

19           **MS. HAMILTON:** We're content with Ms. Harris.

20           Okay. Yes. Yes, we will stipulate.

21           **THE COURT:** You will stipulate. Oh, okay.

22           I have a feeling that you'd be perfectly fine, and do  
23 a very good job; but I think we can't we have to appreciate  
24 your honesty, and we can't second-guess. So I am going to  
25 excuse you from this case.

1 And I'm sure there are some other cases around the  
2 courthouse -- I'm sure you're happy to hear that, right? --  
3 where these kinds of issues are not going to be in play.

4 So I assume you're asking for her to be excused,  
5 right?

6 **MR. HOWDEN:** Yes, your Honor.

7 **MR. OSTERHOUDT:** Yes.

8 **THE COURT:** Okay. I will excuse you. Thank you very  
9 much very, very much for your candidness. I appreciate it. So  
10 if you go back -- I'll excuse you, and you can go back to the  
11 jury room.

12 **PROSPECTIVE JUROR HARRIS:** Thank you.

13 **THE COURT:** And then they'll give you further  
14 directions.

15 And we'll have to replace Ms. Harris in Juror Seat  
16 Number Two. Just when the rest of you thought you were -- you  
17 were home free now, right?

18 Does the Government have any -- Ms. Hamilton, is the  
19 Government going to have any challenges for cause?

20 **MS. HAMILTON:** Yes, your Honor.

21 **THE COURT:** Are there any others, as well?

22 **MR. OSTERHOUDT:** Yes.

23 **MR. HOWDEN:** Yes.

24 **THE COURT:** Let me see you with the reporter at the  
25 side bar very quickly.

1 (Whereupon the following proceedings were held at  
2 Side bar, out of the presence of the jury)

3 **MR. OSTERHOUDT:** Did the Government have any  
4 challenges? Did the Government? Do you want to hear the  
5 Government's challenges?

6 **MS. HAMILTON:** Mr. Butenko does not understand  
7 English very well.

8 **MR. OSTERHOUDT:** I would agree with that. I don't  
9 think we can --

10 **MR. HOWDEN:** To the extent that he does, it's an  
11 impossible burden to put on him to ignore the Russian language.

12 **MS. HAMILTON:** We agree.

13 **THE COURT:** He may not be that refined in his  
14 thinking. Okay. Is that it?

15 **MS. HAMILTON:** Yes.

16 **MR. OSTERHOUDT:** Mr. Ramos. He -- he tried to  
17 rehabilitate himself, but first he said --

18 **THE COURT:** I thought he did a remarkable job.

19 **MR. OSTERHOUDT:** But it wasn't honest, though,  
20 because he said that he would rather not. He wouldn't want  
21 these people to -- he would not want to be judged by people  
22 like him; his attitude. He's totally immersed in police work,  
23 and I don't think that he can put that aside. And, in spite of  
24 his stations, I do think that it's clear enough that he  
25 shouldn't serve.

1           **MS. BOERSCH:** I would think he did. He was very  
2 clear that -- he said if he was an attorney, he wouldn't want  
3 him on the case.

4           **THE COURT:** Well, I don't know about that. I always  
5 wonder what that really means.

6           **MS. BOERSCH:** He also said that he was -- he is -- he  
7 thought that he would not be able to set aside his white-collar  
8 work.

9           **MS. HAMILTON:** I don't think he said that.

10          **THE COURT:** I think he repeated himself a number of  
11 times, in terms of assuring that he would be -- you know, he  
12 could be fair.

13               So any other challenge for cause, or is that it?

14          **MR. HOWDEN:** Not on behalf of Mr. Beker.

15          **MR. OSTERHOUDT:** I'm sorry, your Honor. One moment.

16 Well --

17          **THE COURT:** Somebody you'd like to get rid of on  
18 peremptories?

19          **MR. OSTERHOUDT:** That Republican guy. You know,  
20 there's a reason why he can't --

21          **THE COURT:** Whole slouching attitude's --

22          **MR. OSTERHOUDT:** Slouches. Therefore, we move --

23          **THE COURT:** But that's a peremptory, I'm afraid.

24          **MR. OSTERHOUDT:** I guess that's it.

25          **MS. HAMILTON:** Thank you, your Honor.

1 (End of proceedings at side bar)

2 **THE COURT:** I appreciate you all are getting  
3 exhausted, but I want to get it finished, and let you go.

4 Mr. Butenko, we're going to excuse you, also, from  
5 the jury. If you would, go back to the jury room, please.  
6 Thank you.

7 And Mr. Bowser will call two names; one to be seated  
8 here, and one to be seated in Mr. Butenko's seat.

9 **THE CLERK:** Jeffrey Day.

10 **THE COURT:** Mr. Day, if you'd come up here and take  
11 this seat, please.

12 **THE CLERK:** Richard Pascual.

13 **THE COURT:** And, Mr. Pascual, there's an empty seat  
14 over there. If you would, take that one, please.

15 And are there some of those sheets there, so that  
16 Mr. Day can tell us about himself? Can you tell us about  
17 yourself, please? And good afternoon.

18 **PROSPECTIVE JUROR DAY:** Well, certainly. Good  
19 afternoon. I'm Jeff Day. I live in San Francisco. I have  
20 lived in the Bay Area all my life: Sunnyvale, Berkeley, and  
21 San Francisco for the last couple of years. I'm single. No  
22 kids. I am a software engineer. I've been there for -- I've  
23 been in my current company for almost three years; been a  
24 software engineer for about five.

25 **THE COURT:** What company with you with now?

1           **PROSPECTIVE JUROR DAY:** I'm at a company called  
2 "Quantcast." I have a bachelor's of science in Electrical  
3 Engineering and Computer Science. I went to Cal Berkeley. I  
4 have no military service. Hobbies and leisure activities?  
5 Computer games, cooking, music. Not a member of any  
6 organizations. Reading material or subscriptions -- I have one  
7 subscription to, like, a British music magazine called "*The*  
8 *Wire*." Most of my reading is just the Internet, really.  
9 Television. I don't really watch much, aside from the  
10 occasional sports game. I don't own a car, so I don't have any  
11 bumper stickers. As far as the Internet goes, just the usual  
12 stuff: social networking, keeping in touch with people, news,  
13 stuff like that.

14           **THE COURT:** Okay, thank you.

15           And -- you can be seated. Have you served on a jury  
16 before?

17           **PROSPECTIVE JUROR DAY:** I have not.

18           **THE COURT:** Okay. And have you heard all the  
19 questions and the answers, ad nauseum, right?

20           **PROSPECTIVE JUROR DAY:** Yes.

21           **THE COURT:** Yes, okay.

22           **PROSPECTIVE JUROR DAY:** So I should probably tell you  
23 I have two friends that are lawyers and neither have done any  
24 work with criminal proceedings or anything like that. And I  
25 have one friend who works for Applied Singles, which does

1 contracting work for the defense industry, but I don't really  
2 talk to him that much.

3 **THE COURT:** Okay. So anything about those  
4 relationships that would in any way -- things that you have  
5 learned from them? For example, that would spill over into how  
6 you listen to and decide this case?

7 **PROSPECTIVE JUROR DAY:** No, that would not influence  
8 my thinking on the case.

9 **THE COURT:** And how about your willingness to adhere  
10 to the rules of defendants are merely charged in the indictment  
11 and that's a means of telling them what the charges are, it's  
12 not evidence?

13 **PROSPECTIVE JUROR DAY:** Yes, I have no problem.

14 **THE COURT:** That the evidence comes from witnesses  
15 and so forth and the government has the burden of proof and  
16 they are presumed innocent, so it's the government's job to  
17 prove their guilt by proof beyond a reasonable doubt.

18 Do you agree with all those principles?

19 **PROSPECTIVE JUROR DAY:** Yes. Yes, I do.

20 **THE COURT:** And you could live with them in this  
21 proceeding?

22 **PROSPECTIVE JUROR DAY:** I certainly can.

23 **THE COURT:** And you have had a chance to sit and  
24 listen to what the attorneys had to say and look at some of the  
25 parties involved in the case and so forth. Anything trigger in

1 your mind, Hmm, I don't know if -- it would be a little hard  
2 for me to be fair to one or the other for some reason?

3 **PROSPECTIVE JUROR DAY:** No, I didn't have any  
4 thoughts like that.

5 **THE COURT:** Do you have any feelings about the  
6 government and the government bringing fraud charges against  
7 people?

8 **PROSPECTIVE JUROR DAY:** Not really.

9 **THE COURT:** Any feelings about the military or any  
10 feelings about Iraq that might spill over into this case?

11 **PROSPECTIVE JUROR DAY:** Nothing that would influence  
12 my view of the case.

13 **THE COURT:** And do you speak Russian?

14 **PROSPECTIVE JUROR DAY:** I certainly don't.

15 **THE COURT:** Okay. Is there anything about the fact  
16 that the defendants originally came from Russia -- they are  
17 Canadian now, one has Israeli citizenship as well, but any of  
18 that that would taint your thinking in any way?

19 **PROSPECTIVE JUROR DAY:** No, definitely not.

20 **THE COURT:** Have you ever traveled to Russia or the  
21 Soviet Union?

22 **PROSPECTIVE JUROR DAY:** I have not.

23 **THE COURT:** Yes. Thank you for standing. And I will  
24 get your name here in just a minute.

25 Mr. Pascual. And what is your first name?

1           **PROSPECTIVE JUROR PASCUAL:** Richard.

2           **THE COURT:** Richard. Tell us about yourself, please?

3           **PROSPECTIVE JUROR PASCUAL:** Let's see. I have lived  
4 in the Bay Area for about 37 years, minus five years for  
5 college down in San Diego. I am single, but I have a domestic  
6 partner. No kids.

7           My occupation is a business analyst for Charles  
8 Schwab and Company, so I write business requirements. My  
9 partner's occupation, he's a staff attorney for the Court of  
10 Appeals, state level.

11           I have a Bachelor's in finance.

12           No military service.

13           Hobbies. I like to run, swim, snowboard.

14           No membership organizations.

15           Reading material. I have a subscription to *Newsweek*,  
16 read a lot of online and news sites and finance sites.

17           Television. Mostly sporting events, HDTV.

18           No bumper stickers.

19           Internet use, mostly email and again kind of online  
20 use sites.

21           **THE COURT:** Okay. Thank you.

22           Now, obviously, I have a couple of questions about  
23 your partner. Did your partner ever work either as a  
24 prosecutor or criminal defense attorney at any time?

25           **PROSPECTIVE JUROR PASCUAL:** No.

1           **THE COURT:** And is your partner working for a  
2 particular judge or assigned to a pool of judges?

3           **PROSPECTIVE JUROR PASCUAL:** He works for Judge  
4 McGinnis.

5           **THE COURT:** Okay. And what does he -- or she talk  
6 about you about their work?

7           **PROSPECTIVE JUROR PASCUAL:** Not a whole lot.

8           **THE COURT:** Okay. Do you hear anything about  
9 criminal cases in your discussions at all?

10           **PROSPECTIVE JUROR PASCUAL:** Not a whole lot, other  
11 than, you know, once it's complete, I might have some general  
12 things to say about it.

13           **THE COURT:** Do you hear anything about lawyers?

14           **PROSPECTIVE JUROR PASCUAL:** Just general stuff,  
15 nothing in particular.

16           **THE COURT:** Anything that gives you sort of any  
17 negative feelings about lawyers?

18           **PROSPECTIVE JUROR PASCUAL:** No.

19           **THE COURT:** Okay. And did you hear all the questions  
20 and answers of the other jurors?

21           **PROSPECTIVE JUROR PASCUAL:** Yes, I have.

22           **THE COURT:** Too many times, right?

23           **PROSPECTIVE JUROR PASCUAL:** Yes.

24           **THE COURT:** So your job was to think, Gee, is there  
25 something I should tell them when I got there? Is there

1 something you should tell us?

2           **PROSPECTIVE JUROR PASCUAL:** No, other than just kind  
3 of disclosing my partner is an attorney.

4           **THE COURT:** And have you ever served on a jury  
5 before?

6           **PROSPECTIVE JUROR PASCUAL:** Yes, and it was a civil  
7 case.

8           **THE COURT:** And so you remember that that's a  
9 different burden of proof?

10           **PROSPECTIVE JUROR PASCUAL:** Correct.

11           **THE COURT:** And you could live with that?

12           **PROSPECTIVE JUROR PASCUAL:** Correct.

13           **THE COURT:** And I just went over with Mr. Day, so I  
14 don't want to repeat it again, but you heard what we talked  
15 about with respect to the presumption of innocence and the  
16 burden of proof and all of that.

17           Anything about any of that that concerns you in terms  
18 of being fair in this case?

19           **PROSPECTIVE JUROR PASCUAL:** No.

20           **THE COURT:** Do you know of any reason why you  
21 couldn't be fair to both sides?

22           **PROSPECTIVE JUROR PASCUAL:** No.

23           **THE COURT:** And any feelings that you have about the  
24 government or the Department of Defense or the Army or --

25           **PROSPECTIVE JUROR PASCUAL:** No.

1           **THE COURT:** (Continuing) -- Iraq, the Iraq war --

2           **PROSPECTIVE JUROR PASCAL:** No.

3           **THE COURT:** (Continuing) -- that would influence you  
4 would you would listen to and decide this case?

5           **PROSPECTIVE JUROR PASCUAL:** No.

6           **THE COURT:** Okay. Anything else that you think you  
7 should tell us?

8           **PROSPECTIVE JUROR PASCUAL:** I don't speak Russian.

9           **THE COURT:** Okay. Very good. Maybe you know all the  
10 questions better than I do, so anything else?

11           Okay. Anything about the fact that the defendants  
12 originally came from Russia and they are Canadian citizens and  
13 all that that might --

14           **PROSPECTIVE JUROR PASCUAL:** No.

15           **THE COURT:** (Continuing) -- that might interfere with  
16 your thinking about this case?

17           **PROSPECTIVE JUROR PASCUAL:** No.

18           **THE COURT:** Okay. Ms. Hamilton, do you have any  
19 questions of either of these gentlemen?

20           **MS. HAMILTON:** Just very briefly.

21           You heard the questions I had about concealment and  
22 the -- this case being about what wasn't told. Based on what  
23 you heard, do either of you have any questions or feel like  
24 that might be unfair, to bring a criminal case about  
25 information that wasn't provided?

1 (Prospective jurors respond negatively.)

2 **MS. HAMILTON:** Any of you had any negative  
3 experiences with law enforcement?

4 (All prospective jurors respond negatively.)

5 **THE COURT:** Mr. Osterhoudt?

6 **MR. OSTERHOUDT:** I have no questions, your Honor.

7 **THE COURT:** Ms. Boersch?

8 **MS. BOERSCH:** No questions. Thank you.

9 **THE COURT:** Okay. Pass for cause except for the one  
10 that I already dealt with?

11 **MR. HOWDEN:** Yes, your Honor.

12 **MS. HAMILTON:** Yes, your Honor.

13 **THE COURT:** Okay. Thank you. Now it's the  
14 logistics. I think you deserve a break, but this isn't the  
15 final break, okay. Take about 15 minutes and then I will have  
16 you all come back and resume your places, and that includes  
17 those of you who are still in the courtroom but never had to  
18 answer any questions. Come back and at that time we will tell  
19 you who is going to be on the jury and who is not and then  
20 we will recess for the day. Okay?

21 So follow the instruction. Do not discuss the case  
22 or anything about it with anyone else, and we will see you in  
23 15 minutes. But all the jurors should leave the courtroom  
24 because we are going to have to have some discussions about who  
25 gets to stay and who gets to go.

1 (All Prospective jurors exit courtroom.)

2 (Discussion held off the record amongst all counsel.)

3 **THE COURT:** All right. They are going to start  
4 returning in a few, so we have got to go. If your first two  
5 could be joint ones. The way we divided it up -- Mr. Bowser  
6 divided it up nicely so the first two defense challenges will  
7 be joint, and then separate, separate, then a joint, then  
8 separate, separate, et cetera. Okay?

9 Okay. Does the government have a challenge?

10 **MS. HAMILTON:** Yes. The government would excuse  
11 juror number one. Ms. Stathis.

12 **THE COURT:** Okay. Joint challenge?

13 **MR. HOWDEN:** Number five and number 12, your Honor.

14 **THE COURT:** One at a time right now at the outset.  
15 Number five, and give me the names. Is that Lau?

16 **MR. HOWDEN:** Yes.

17 **THE COURT:** The government has one? And then you'll  
18 get three.

19 **MR. HOWDEN:** Got it.

20 **MS. HAMILTON:** Number seven, Ms. Davidson.

21 **THE COURT:** Ms. Davidson?

22 **MS. HAMILTON:** Yes.

23 **THE COURT:** Okay. Now, one joint one.

24 **MR. HOWDEN:** Number 12, Mr. Schwartzler.

25 **THE COURT:** Mr. Schwartzler.

1 And then separate ones, two -- one each here now?

2 **MR. HOWDEN:** We would exclude number 14, Ms. Whitney.

3 **THE COURT:** Ms. Whitney. And that's a Beker  
4 challenge.

5 And for Mr. Prilik?

6 **MR. OSTERHOUDT:** We excuse number 19, Mr. Novick.

7 **THE COURT:** Really? Okay. I'm sorry.

8 **MS. HAMILTON:** Was it the bumper sticker?

9 **MR. HOWDEN:** Which one?

10 (Laughter.)

11 **THE COURT:** But using the services of the federal  
12 courts, apparently, to recoup some money.

13 Okay. Now, the government has one?

14 **MS. HAMILTON:** Number 20, Mr. Chen.

15 **THE COURT:** And now one joint one and two separate  
16 ones?

17 **MR. HOWDEN:** Ms. Sermenno, number 22.

18 And then number 23 Mr. Thompson.

19 **THE COURT:** Thompson? Ms. Thompson?

20 **MR. HOWDEN:** Ms. Thompson, I'm sorry, your Honor.

21 **THE COURT:** Okay. And for Mister -- that's for  
22 Mr. Beker.

23 And for Mr. Prilik?

24 **MR. OSTERHOUDT:** Yes. Number 29, Ms. Novitski.

25 **THE COURT:** 29, Ms. Novitski.

1 Okay. Does the government have one?

2 **MS. HAMILTON:** Number 35, Mr. Miller.

3 **THE COURT:** And a joint one and then two individual  
4 ones?

5 **MR. HOWDEN:** Mr. Ramos, number 30.

6 **THE COURT:** And for Mr. Beker?

7 **MR. HOWDEN:** Ms. Reed, number 33.

8 **THE COURT:** And for Mr. Prilik?

9 **MR. OSTERHOUDT:** Your Honor, number 36,  
10 Mr. Ramchandani.

11 **THE COURT:** Yes. Okay. And the government have any  
12 challenge?

13 **MS. HAMILTON:** Number 34, Ms. Rosenthal.

14 **THE COURT:** And one joint and two individual.

15 **DEFENSE COUNSEL:** Ms. Martine, number eight.

16 **THE COURT:** Is that the joint one?

17 **MR. HOWDEN:** Yes.

18 **THE COURT:** Okay. And for Mr. Beker?

19 **MR. OSTERHOUDT:** If I could have just one moment,  
20 your Honor?

21 (Brief pause.)

22 **MR. HOWDEN:** Mr. Beker will pass.

23 **THE COURT:** Okay. And you understand you lose that  
24 one, you know.

25 **MR. HOWDEN:** That's correct your Honor.

1           **THE COURT:** Okay. And Mr. Prilik?

2           (Brief pause.)

3           **MR. OSTERHOUDT:** Your Honor, thank you. We would  
4 excuse number 25, Mr. Cardenas.

5           **THE COURT:** 25, Mister --

6           **MR. OSTERHOUDT:** Paul Cardenas.

7           **THE COURT:** Okay. Does the government have a --

8           **MS. HAMILTON:** Yes, your Honor. Number 32,  
9 Ms. Yamamoto.

10          **THE COURT:** What's the name?

11          **MS. HAMILTON:** Yamamoto.

12          **THE COURT:** Ms. Yamamoto, okay.

13                 Now, you have one joint one to exercise now, and then  
14 the government has one, and you have two individual ones. I  
15 mean, that's how we sorted it out and that gives you each the  
16 number that you were assigned.

17          **MR. HOWDEN:** Where does that put us with respect to  
18 the alternates, your Honor?

19          **THE COURT:** Well, let's see. What we've got are Day,  
20 Gannaway, Bonacum, Maffey. That's one, two, three, four, five,  
21 six, six, seven, eight, nine, 10, 11, 12, 13, 14 -- am I right?  
22 Merritt and Gillespie would be the alternates? And all of the  
23 ones before that that have not been excused would be the  
24 regular jurors.

25                 So Merritt and Gannaway -- Gillespie, rather, would

1 be the -- Merritt and Gillespie would be the alternates?

2 **THE CLERK:** Right.

3 **THE COURT:** No, no. That's not right. Gillespie  
4 would be a regular juror -- no, that's right, 13. Yeah.

5 **THE CLERK:** Gillespie and Merritt.

6 **THE COURT:** Gillespie and Merritt would be the  
7 alternates right now.

8 **MR. WARD:** That's what I have.

9 (Brief pause.)

10 **THE COURT:** Going? Going? Pass?

11 **MR. OSTERHOUDT:** Your Honor, we would excuse  
12 Mr. Chaney, number 18.

13 **THE COURT:** Mr. Chaney? That's the joint one.  
14 Does the government have a challenge now?

15 **MS. HAMILTON:** Number 15, Ms. Cannon.

16 **THE COURT:** And now you have two separate ones. And  
17 now I've lost track. Now you're up to Kapoor and Gibson. Is  
18 that right?

19 **THE CLERK:** Gibson and Kapoor.

20 **THE COURT:** Kapoor and Gibson would be the  
21 alternates, right?

22 **MR. HOWDEN:** Your Honor, Mr. Beker will excuse  
23 Ms. Calderon, number 13.

24 **THE COURT:** Okay. And Mr. Prilik has one and then  
25 that's it. So that gets us up to Gibson and Pascual as the

1 alternates.

2 **MR. OSTERHOUDT:** We would excuse Mr. Maffey.

3 **THE COURT:** Mr. Maffey?

4 **MR. OSTERHOUDT:** Maffey, yeah. He's number six.

5 **THE COURT:** Okay. So that's it then. So then that  
6 gets us up to Pascual and Kameoka as the alternates?

7 **MR. HOWDEN:** That's correct.

8 **THE COURT:** So let me read the list so we are all on  
9 the same page before we call them in here.

10 Mr. Day, Gannaway -- I can't remember whether  
11 Gannaway is a man or woman, I guess a woman -- Mr. Bonacum,  
12 Mr. Wong, Ms. Evans, Watson, Black, Costa, Gillespie, Merritt,  
13 Kapoor-Acuna, Gibson. Right?

14 **MR. HOWDEN:** Yes, your Honor.

15 **THE COURT:** Those are the regular jurors? And  
16 Pascual and Kameoka are the alternates.

17 And we lose Dickinson because there was one pass. Is  
18 that correct?

19 **MS. BOERSCH:** Correct.

20 **MR. HOWDEN:** Correct.

21 **THE COURT:** We are all on the same page on this?

22 Okay. You can bring them in. We'll excuse them and  
23 then I'm going to give them a couple instructions about not  
24 discussing the case and all that kind of stuff, and Mr. Bowser  
25 will take them back to the jury room and get them their badges

1 and so forth and then we will recess.

2 **MR. WARD:** Lunch?

3 **THE COURT:** Something like that. Dinner, I don't  
4 know, supper, afternoon tea.

5 (Prospective jurors enter courtroom.)

6 **THE COURT:** Okay. We have everyone here? Just  
7 about? You may be seated, if you aren't already.

8 Okay, ladies and gentlemen. Good news and bad news,  
9 right, depending on how you look at it, I guess.

10 First of all, I want to thank you everyone who is not  
11 going to end up serving on this jury for your time and your  
12 patience and being willing to listen to these questions or  
13 having to listen to the questions over and over again. But  
14 it's very important that we be able to do it in this fashion so  
15 that -- as you can see, there weren't that many jurors left  
16 over to question, that we are sort of having a representative  
17 and fair and impartial jury as much as that is possible.

18 So I appreciate all of you who have had to answer the  
19 questions and to go through this process and, also, for those  
20 of you who had to listen, but didn't have to respond to any of  
21 them. Again, thank you very much very, very much on behalf of  
22 the Court because by participating in it it's helped us to, in  
23 fact, be able to get a jury.

24 So I will excuse those, other than the names I am  
25 going to read. It's easier just to read the names who are

1 going to be seated on the jury. And I'll read it twice, just  
2 to make sure we're correct. So nobody head for the door until  
3 you're sure that you are not on this jury.

4 So the following persons will be seated on the jury:  
5 Mr. Day, Ms. Gannaway, Mr. Bonacum -- whose name I will learn  
6 to pronounce properly at some point -- Mr. Wong, Ms. Evans, Ms.  
7 Watson, Mister -- where are we here? Mr. Black, Mr. Costa,  
8 Mr. Gillespie, Merritt, Ms. Kapoor-Acuna, Mr. Gibson --  
9 Ms. Gibson, I'm sorry. I can't see there. And Mr. Pascual.  
10 And Ms. Kameoka.

11 Is that correct, Mr. Bowser?

12 **THE CLERK:** Yes.

13 **THE COURT:** That gives us our full 14? And does  
14 everyone agree with that?

15 **MS. HAMILTON:** Yes, your Honor.

16 **MR. HOWDEN:** Yes, your Honor.

17 **THE COURT:** Okay. So doing it again to make sure.  
18 All of the names I have just read are on the jury and if you'll  
19 wait here, then I will give you your instructions. And the  
20 rest of you are to go back to the jury room, is that correct,  
21 for further instructions?

22 **THE CLERK:** Yes.

23 **THE COURT:** So, again, thank you very much.

24 Mr. Day, Ms. Gannaway, Mr. Bonacum, Mr. Wong,  
25 Ms. Evans, Ms. Watson, Mr. Black, Mr. Costa, Mr. Gillespie,

1 Ms. Merritt, Ms. Kapoor-Acuna, Ms. Gibson, Mr. Pascual and Ms.  
2 Kameoka.

3 Is Ms. Kameoka? Oh, there you are. Okay. I  
4 couldn't see.

5 You are all to remain. And the rest of you may leave  
6 and again thank you very, very much.

7 (Prospective jurors exit courtroom.)

8 **THE COURT:** And now we will reassemble a little bit.  
9 Mr. Day and Ms. Gannaway and Mr. Bonacum, if you could move up  
10 here. And then if you will come down, Mr. Wong, and take the  
11 next seat in line. And the same thing with you, Ms. Evans and  
12 Ms. Watson. And then, Mr. Black, if you take that seat? And  
13 then Mr. Costa, if you would start the back row. And who is  
14 next? Mr. Gillespie?

15 **THE CLERK:** Yes, Gillespie.

16 **THE COURT:** Okay.

17 **THE CLERK:** And then Merritt.

18 **THE COURT:** Ms. Merritt? If you would take the next  
19 seat in the back row?

20 Ms. Kapoor-Acuna, Ms. Gibson, Mr. Pascual, and  
21 Ms. Kameoka. Okay. Thank you.

22 And, counsel, you may all be seated.

23 So you are with us for the time that we are going to  
24 try this case. And I'm sure we can bring it in in less time  
25 than what I indicated. I gave you the outside on that.

1 Right, counsel?

2 **MR. HOWDEN:** That's correct, your Honor.

3 **THE COURT:** Yes, okay.

4 And what I'm going to do is just give you a couple of  
5 instructions and then Mr. Bowser, the courtroom deputy, will  
6 take you to the jury room right adjoining this courtroom and  
7 that's where you will come every day when you report in. You  
8 will get juror badges, he will give those to you. And then you  
9 come in and show your badge so that you can get into the  
10 courthouse a little more readily. And then come directly to  
11 this floor, the 18th floor, and you'll -- he'll explain to you  
12 how you buzz to get in and then come directly to the jury room.  
13 Don't come into the courtroom, but come into the jury room.

14 We can't start until you are all here. So, please,  
15 make sure you are here promptly at 8:30. If you take public  
16 transportation or drive across one of those bridges then, you  
17 know, you have to figure that out because it can sometimes be a  
18 little difficult.

19 So we'll start at 8:30 and we will recess at 1:30.  
20 You know, if we happen to be in the course of a witness's  
21 testimony at around 1:30 and we can finish it up in a few  
22 minutes, then I may ask you to stay a few minutes longer; but  
23 if we have got a big chunk of testimony from that witness, we  
24 will just pick up with it the next day. So we will try to  
25 break as close to that time as possible so you can have lunch

1 after and go do whatever else you want to do for the rest of  
2 the day.

3           There is an instruction that will apply throughout  
4 the trial, and that is that you are not to discuss the case,  
5 even amongst yourselves, until it's submitted to you for  
6 deliberation. So, you know, even though you may have heard  
7 some interesting testimony and you would like to find out what  
8 the juror sitting next to you thinks about it during the course  
9 of the trial, you just have to wait. You will have a chance to  
10 talk among yourselves about it when the case is submitted to  
11 you for deliberation. But you are not to talk about it with --  
12 amongst yourselves or with anyone else, including when you go  
13 home, your family members. Say, Well, I'm stuck on this jury,  
14 you know, for whatever time your going to tell them, and it's a  
15 criminal case and that's it. I can't tell you anything more  
16 about it. That's how to answer that question, because you are  
17 not supposed to talk about the case outside of the courtroom.

18           Nor are you to read anything about it. If there  
19 should be anything at all -- of course, we have to talk about  
20 reading about it in the newspapers or listening to it on the  
21 news, but now we have to talk to you about some of those things  
22 that we were talking about earlier, Google and Twitter and all  
23 the media, FaceBook, and so on and so forth. And doing any  
24 research about the case or doing any legal research, you are  
25 not to do any of that or try to go on court websites and find

1 out something about the case. No. Just -- you will be happy  
2 at the end of the day not to have to hear anything more about  
3 the case and go about your business and do something else  
4 that's more interesting and talk to your family about other  
5 things.

6           So just make sure you don't do that, because it  
7 jeopardizes the proceedings if anybody is getting information  
8 that other jurors do not get. And it can end up -- I don't  
9 want to see people's, you know, cell phones and so forth, but,  
10 you know, if that happens that's what we have to do, and I  
11 would prefer not to do that. That you -- if you have a cell  
12 phone that has search capability and so forth, then you're not  
13 to use it for anything related to this case, at all. Period.  
14 You are not to do any investigation or research or anything  
15 else. And as I said, you are not to talk about it.

16           Now, you may coming and going run into people or in  
17 the hallway the attorneys or the parties. If they don't meet  
18 and greet you, that's not because they are unfriendly or don't  
19 like you, but because they are under instructions not to talk  
20 to the jurors. And so you'll understand that you are not  
21 supposed to talk with them either. You can smile, but that's  
22 all right, or nod. It's up to you.

23           But if you hear anybody talking in the hallway about  
24 the case, you know, then move away. If someone should try to  
25 talk to you about the case -- generally this doesn't happen,

1 but if it does, then you should let Mr. Bowser or myself know  
2 immediately so that appropriate instructions are given, because  
3 you all, as I said, have to hear the case from the same  
4 witnesses and the same evidence at the same time.

5 And then, also, you are not to form or express any  
6 opinion based upon what you have heard at various stages. Keep  
7 an open mind through all the proceedings until all of the  
8 evidence is submitted and until the attorneys have made their  
9 arguments to you and then you go into deliberate. That's when  
10 you talk about it and begin to formulate, after you've talked  
11 with your fellow jurors about, you know, your decision and  
12 about the case and what you think of it and the witnesses and  
13 so forth.

14 Are there any questions about any of that?

15 (No response.)

16 **THE COURT:** Now, there's generally not a transcript  
17 available at the end of proceedings because the court reporter  
18 will be in another courtroom or some other proceeding taking  
19 down those proceedings. So you're going to have to rely upon  
20 your own recollection, but you can take notes. And if you wish  
21 to take notes, we'll provide you with a pad and pencil or pen  
22 and you can take notes here in the courtroom, and I'll give you  
23 some instructions tomorrow about the use of those. Because  
24 they are for your own personal use. You leave them here during  
25 the trial with your name on them, and you will have an envelope

1 to put them in so nobody else can look at them and so forth.  
2 And then at the end of the trial if you wish to take them with  
3 you, you can do that. But they will stay here during the  
4 course of the trial.

5 And so Mr. Bowser will ask you either tonight before  
6 you leave or tomorrow morning: Do you wish to have -- to take  
7 notes? And you shouldn't be overly influenced by somebody else  
8 who takes notes if you decide not to. You do what seems to  
9 work best for you. Because it's important -- you know,  
10 sometimes we are told that body language is important, you  
11 know, and so you're so busy writing things down that you miss  
12 some nuances of the witness or the witness's expression or, you  
13 know, whatever on the stand. So you have to figure out what  
14 works best for you in terms of taking notes.

15 Questions, that's every lawyer's dream, right? The  
16 jury asks questions. You know, if you don't understand  
17 something, it's important that it be made known -- you know,  
18 that you understand it and so that's all right. But you have  
19 to write the question out and give it to Mr. Bowser, and I will  
20 take it up with the attorneys. And you're subject to the same  
21 Rules of Evidence that they are. So just keep that in mind.  
22 But if something is not clear, you should let us know, if it's  
23 not clear.

24 On the other hand, if it has something to do, like,  
25 "We need a rest break," or something like that, or "We can't

1 hear the witness," certainly just raise your hand. But if it  
2 has anything at all to do with the case or the testimony, then  
3 write the question out and give it to Mr. Bowser and we'll  
4 figure out what to do with it.

5 Okay? So we'll see you tomorrow morning at 8:30. We  
6 will give you a couple coffee breaks. Are they getting some  
7 continental breakfast kind of thing in?

8 **THE CLERK:** They are. They are.

9 **THE COURT:** You don't get that. So what do they get?

10 **THE CLERK:** Coffees, juices, fruits, bagels with the  
11 spreads, Danish.

12 **THE COURT:** So get here early, a little bit, so you  
13 can at least grab something or have your choice of what to  
14 grab, okay?

15 And yes.

16 **JUROR KAMEOKA:** Is there a specific dress code?

17 **THE COURT:** No -- well, come clothed, but not  
18 specific. If you want to wear jeans or something, what you're  
19 comfortable in, some other kind of attire, that's fine.

20 If you want to drink coffee or water, just make sure  
21 it has a cap on it or a top on it. In here. And, of course,  
22 you know there will be coffee in there. Look, the coffee  
23 that's in there, hey, it's not Peet's. What can I tell you?

24 Yes. Okay? And did you have a question.

25 **JUROR MERRITT:** Yeah. So I can -- when I call my

1 work and inform them of this wonderful news, I'm going to tell  
2 them it's three weeks, just to be on the safe side?

3 **THE COURT:** Tell them the outside is three weeks,  
4 but, hopefully, it will be finished earlier than that.

5 Whom do you work for?

6 **JUROR MERRITT:** I work for HOV Services. I'm the  
7 supervisor of my department, so I need --

8 **THE COURT:** What is HOV Services? I know HOV Lanes.

9 **JUROR MERRITT:** It stands for Hands On Ventures. We  
10 are like a -- we're a call center. I just actually work for --  
11 T-Mobile has hired me out to dispute their bills. I  
12 investigate the billing disputes.

13 **THE COURT:** You tell them that -- is this mostly  
14 telecommunication companies?

15 **JUROR MERRITT:** Yeah. Just telephones, but I'm the  
16 boss of it, so I'm going to have a to let them know.

17 **THE COURT:** You tell them they use our services and  
18 clutter up the courts with their cases all the time, so they  
19 ought to keep that in mind.

20 **JUROR MERRITT:** Yeah, yeah, I know. Okay.

21 **THE COURT:** Okay. Yes?

22 **JUROR BONACUM:** Two questions. How do we address  
23 you? I don't know what your title is. And then do you think  
24 that --

25 **THE COURT:** It's easy. You don't even remember my

1 name. Just call me judge. Okay? It doesn't have to be Your  
2 Worship or Your Highness or anything.

3 **MS. BOERSCH:** We have to.

4 **THE COURT:** You have been doing it all that time,  
5 right?

6 **MR. OSTERHOUDT:** Years.

7 **JUROR BONACUM:** And do you take lunch? Do we get  
8 lunch?

9 **THE COURT:** No, no. I take lunch, but after you  
10 leave. And you take lunch after you leave.

11 No. We're going to go -- we'll take one or two  
12 coffee breaks, whatever I can get away with. If I can get away  
13 with one, you know, so we can keep plowing forward. But if we  
14 need to take two, you know, a rest break or whatever, we will  
15 do that. But they will be short, 10, 15 minutes. And then we  
16 break at 1:30, so you can go get lunch after that.

17 But spending -- trying to find a place to have lunch  
18 in beautiful downtown Civic Center area is not so great. So  
19 you will be happy not to have to be limited to the resources  
20 around here. Okay?

21 **JUROR MERRITT:** I'm sorry. One more. So we are  
22 going to be coming in 8:30 to 1:30, and then we are done for  
23 the day?

24 **THE COURT:** Yes, yes.

25 **JUROR MERRITT:** I may be able to work in the evening.

1           **THE COURT:** You can do that. Whatever works for you.  
2           Okay. Fine. So have a very pleasant afternoon and  
3 evening. Mr. Bowser will see you, if you wait with him, back  
4 in the jury room.

5           Then we'll see you tomorrow morning at 8:30, ready to  
6 get started with some instructions and then opening statements  
7 and the evidence. Have a very pleasant afternoon and evening.

8           (Jury exits courtroom at 2:33 p.m.)

9           **MS. PLETCHER:** Your Honor, before we adjourn, I would  
10 like to bring up a matter for the record and possibly  
11 everyone's amusement.

12          **THE COURT:** You got this task?

13          **MS. HAMILTON:** She got the note.

14          **MS. BOERSCH:** She has an admirer.

15          **THE COURT:** One from the jury?

16          **MS. PLETCHER:** As the dismissed jurors were walking  
17 out, one of them handed me a note that read: "I love your  
18 hair. Call me sometime." And he gave his phone number, and  
19 his name is Matthew Garavito. So there is no impropriety here.

20          **THE COURT:** So when will you be calling him?

21          **MS. HAMILTON:** After the case is over.

22          **MS. PLETCHER:** I don't know. So I'm --

23          **THE COURT:** He's not on the jury?

24          **MS. PLETCHER:** He is not on the jury and he told me  
25 that as he handed it to me. He said, "I'm so glad I didn't get

1 picked for the jury."

2 **THE COURT:** So now he can propose to you, right?

3 **MS. PLETCHER:** It's very amusing. I will tell my  
4 husband of 13 years. He will like to know that.

5 **THE COURT:** You can hold that --

6 **MS. BOERSCH:** Take it home.

7 **MS. PLETCHER:** I'm going to bring it home.

8 (Discussion held off the record.)

9 **THE COURT:** Now there was some other issue, but I  
10 think it's time for everybody to have lunch, it's getting late,  
11 and I have a meeting in about another hour.

12 **MS. BOERSCH:** We do have one jury instruction issue  
13 which I think will need to be resolved before -- you are going  
14 to call Mr. Rocklin tomorrow?

15 **MS. HAMILTON:** Yes, but we haven't had the  
16 opportunity to review it.

17 **MS. PLETCHER:** We should talk some more about it.

18 **MS. HAMILTON:** We need an opportunity to review it.

19 **MS. BOERSCH:** We raised this with the Court before.  
20 It's the question of whether or not Mr. Rocklin can opine on  
21 what is meant on the tapes. And we had submitted -- I can't  
22 remember if we submitted a proposed instruction, but we had  
23 briefed it. I will submit a proposed instruction.

24 I have sent it to them and they will look at it and  
25 that -- we should resolve that before Mr. Rocklin testifies.

1           **MS. PLETCHER:** And we oppose the instruction. So it  
2 will take a little argument.

3           **THE COURT:** Well, we'll figure out some way to deal  
4 with it, but I'm going to preinstruct them as to the usual  
5 instructions, what their duties are and evidence and  
6 credibility and so forth. And then just sort of the brief  
7 instruction, definitional instruction of this, what has to be  
8 proved as to each count, without any further elaboration. Then  
9 we will do opening statements.

10           What did you say? You need about an hour? Less than  
11 that?

12           **MS. HAMILTON:** I think Mr. Ward --

13           **THE COURT:** That's your --

14           **MR. WARD:** We'll come in at about a half hour, your  
15 Honor.

16           **THE COURT:** And each of you need what, about a half  
17 hour?

18           **MR. OSTERHOUDT:** Probably at the outside.

19           **MR. HOWDEN:** At the outside.

20           **THE COURT:** And who is going to go first, or have you  
21 decided that?

22           **MR. HOWDEN:** I will be going first.

23           **THE COURT:** Okay. Okay, fine. Okay. So we'll see  
24 you tomorrow morning then 8:30. And somewhere in between after  
25 the opening statements maybe or -- and before Mr. Rocklin

1 testifies, because he is going to be your first witness?

2 **MS. HAMILTON:** Yes. Unless we --

3 **THE COURT:** We can take up this issue.

4 **MS. HAMILTON:** Unless you get it agreed to.

5 **THE COURT:** Okay. Well, work on that. Okay. Thank  
6 you.

7 (Whereupon at 2:38 p.m. further proceedings  
8 in the above-entitled cause was adjourned  
9 until Wednesday, January 12, 2011 at 8:30 a.m.)

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**CERTIFICATE OF REPORTER**

WE, LYDIA ZINN, and DEBRA PAS, Official Reporters for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in CR. 07-765 MHP, United States of America v. Mendel Beker, et al., were reported by us, certified shorthand reporters, and were thereafter transcribed under our direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by us at the time of filing

The validity of the reporters' certification of said transcript may be void upon disassembly and/or removal from the court file.

\_\_\_\_\_/s/ Lydia Zinn\_\_\_\_\_  
Lydia Zinn, CSR 9223, CRR

\_\_\_\_\_/s/ Debra L. Pas\_\_\_\_\_  
Debra L. Pas, CSR 11916, CRR

Tuesday, January 11, 2011